code of federal regulations

AE 2.106/3-32/PL 190-399/1986 MF
COMPLETE
507

National Defense

ORIGINAL

32

PARTS 190 TO 399
Revised as of July 1, 1986

822-008-00103-4

BEST COPY AVAILABLE

code of federal regulations

National Defense

32

PARTS 190 TO 399

Revised as of July 1, 1986

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1986

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

1934

I.

BEST COPY AVAILABLE

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: [redacted] 19K

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE

MICROFICHE (24X)

SUBSCRIPTION PRICE:	DOMESTIC--	$225.00	A YEAR
		$ 2.25	SINGLE COPY
	FOREIGN--	$280.00	A YEAR
		$ 2.85	SINGLE COPY

BEST COPY AVAILABLE II

Table of Contents

Page

Explanation v

Title 32:

Subtitle A—Department of Defense (Continued):

Chapter I—Office of the Secretary of Defense (Continued) 5

Finding Aids:

Table of CFR Titles and Chapters 807

Alphabetical List of Agencies Appearing in the CFR 821

List of CFR Sections Affected 829

Cite this Code CFR

thus: 32 CFR 190.1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16....................as of January 1
Title 17 through Title 27....................as of April 1
Title 28 through Title 41....................as of July 1
Title 42 through Title 50....................as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1986), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the D[illegible]ctor, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1986

THIS TITLE

Title 32—National Defense is composed of six volumes. The parts in these volumes are arranged in the following order: Parts 1-189, Parts 190-399, Parts 400-629, Parts 630-699, Parts 700-799, and Part 800 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1986.

The current regulations issued by the Department of the Army appear in the volumes containing Parts 400-629 and 630-699; those issued by the Department of the Navy appear in the volume containing Parts 700-799, and those issued by the Department of the Air Force appear in the volume containing to Part 800 to End.

For this volume, Laurence L. Davey was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.

$24.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

$22.00 per year

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ ________ ☐ check
☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐☐ - ☐
Order No. ____________

Master Card and VISA accepted.

MasterCard

VISA

Credit Card Orders Only
Total charges $ ________
Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone No.
Area Code

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please enter the subscription(s) I have indicated:

___ **LSA**
(List of CFR Sections Affected)
$24.00 a year domestic
$30.00 foreign

___ **Federal Register Index**
$22.00 a year domestic
$27.50 foreign

PLEASE PRINT OR TYPE

Name - First, Last

Company name or additional address line

Street address

City

State

ZIP Code

(or Country)

BEST COPY AVAILABLE

Title 32—National Defense

(This book contains Parts 190 to 399)

	Part
SUBTITLE A—Department of Defense (Continued):	
CHAPTER I—Office of the Secretary of Defense (Continued).	190

BEST COPY AVAILABLE

BLANK PAGE

2

Subtitle A—Department of Defense (Continued)

BLANK PAGE

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

(Continued)

(Parts 190 to 399)

CROSS REFERENCE: For Subchapter A—Defense Acquisition Regulations, see volumes containing Parts 1 to 39.

SUBCHAPTER M—MISCELLANEOUS

Part		*Page*
190	[Reserved]	
191	The Department of Defense Equal Opportunity Program	11
192	Engineering for transportability	13
193	Highways for national defense	15
194	International co-production projects and agreements between the United States and other countries or international organizations	17
195	Configuration management	19
196	Work breakdown structures for defense materiel items	21
197	Environmental effects abroad of major Department of Defense actions	28
198	[Reserved]	
199	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)	37
200	Industrial mobilization production planning systems and procedures	157
201	Sale of surplus military equipment to State and local law enforcement and firefighting agencies	158
202	Policies and guidelines governing Armed Forces	159
203	Smoking in DoD occupied buildings and facilities	167
204	Test and evaluation	168
205	Defense Audiovisual Agency	173
206	Performance measurement for selected acquisitions	177

Part		Page
207	Acquisition and distribution of commercial products (ADCP)	184
208	Federal Radionavigation Plan	185
209	Metric system of measurement	186
210	Enforcement of State traffic laws on DoD installations	188
211	DoD Foreign Tax Relief Program	189
212	Private organizations on DoD installations	192
213	DoD cooperation with civilian law enforcement officials	198
214	Environmental effects in the United States of DoD actions	206
215	Employment of military resources in the event of civil disturbances	212
216	Identification of institutions of higher learning that bar recruiting personnel from their premises	219
217	Recreational use of off-road vehicles on DoD lands	223
218	Guidance for the determination and reporting of nuclear radiation dose for DoD participants in the atmospheric nuclear test program (1945-1962)	225
219	Protection of human subjects in DoD-Supported Research	231
224	DoD Committee Management Program	234
229	Protection of archaeological resources: uniform regulations	237
230	Procedures governing banking offices on DoD installations	248
231	Financial institutions on DoD installations	260
231a	Procedures governing credit unions on DoD installations	265
232	Natural resources; fish and wildlife management	273
233	Natural resources; forest management	277
234	Natural resources; soil and water management	278
235	Mineral exploration and extraction on DoD lands	281
236	Basic regulations in the military supply system	283
237	Community relations	284
237a	Public affairs liaison with industry	291
238	Armed Forces community relations	294
239	Homeowners Assistance Program—application processing	318
239a	Department of Defense Housing Referral Program	326
239b	Housing referral offices and services	327

Part *Page*
242 Admission policies and procedures for the School of Medicine, Uniformed Services University of the Health Sciences 335
242a Public meeting procedures of the Board of Regents, Uniformed Services University of the Health Sciences 340
242b General procedures and delegations of the Board of Regents of the Uniformed Services University of the Health Sciences 344
243 Intergovernmental coordination of DoD Federal development programs and activities 349
244 Honorary awards to private citizens and organizations 351
245 Plan for the security control of air traffic and air navigation aids (short title: SCATANA) 354
246 Guard/Reserve Forces facilities projects 366
247 Standard rates for unofficial telephone service at DoD activities 376
248 Department of Defense periodicals 378
250 Withholding of unclassified technical data from public disclosure 380
251 Sale of government-furnished equipment or materiel and services to U.S. companies 389
252 Department of Defense offshore military activities program 394
253 Assignment of American National Red Cross and United Service Organizations, Inc., employess to duty with the Military Services 396
255 Quality assurance 397
256 Air installations compatible use zones 401
257 Acceptance of service of process 409
258 Cooperation with allies in research and development of defense equipment 410
259 Uniform relocation assistance and real property acquisition for Federal and federally-assisted programs 411
260 Vending facility program for the blind on Federal property 442
261 Armed Services military club and package stores ... 441
262 Policies governing the contribution of Federal funds to the States under Chapter 133, Title 10, United States Code—facilities for Reserve components 449
263 Traffic and vehicle control on certain Defense Mapping Agency sites 453
264 International interchange of patent rights and technical information 455

Part *Page*

268 Collecting and reporting of foreign indebtedness within the Department of Defense 453
272 Administration and support of basic research by the DoD 461
273 Research grants and title to equipment purchased under grants 462
274 Regulations governing competitive bidding on U.S. Government guaranteed military export loan agreements 464
275 Precise time and time interval (PTTI) standards and calibration facilities for use by Department of Defense Components 466

SUBCHAPTER N—COMMERCIAL INSURANCE [RESERVED]

SUBCHAPTER O—MILITARY POSTAL SERVICE [RESERVED]

SUBCHAPTER P—RECORDS

286 DoD Freedom of Information Act Program 469
286a DoD Privacy program 502
286b Privacy program 555
286c Office of Joint Chiefs of Staff, Privacy Act of 1974 565
286d Defense Advanced Research Projects Agency, Privacy Act of 1974 565
286e Uniformed Services University of Health Sciences, Privacy Act of 1974 565
286f Obtaining information from financial institutions. 565
286g Defense Audiovisual Agency implementation of the Privacy Act of 1974 566
287 Availability to the public of Defense Communications Agency information 569
287a Personal privacy and rights of individuals regarding their personal records 572
288 User charges 576
289 Availability to the public of DoD directives, DoD instructions, changes thereto, and certain DoD publications 583
290 Availability of Defense Contract Audit Agency records 584
290a Defense Contract Audit Agency, Privacy Act of 1974 590
291 Availability to the public of Defense Nuclear Agency information 601
291a Defense Nuclear Agency Privacy Program 609

Part		Page
292	Availability to the public of Defense Intelligence Agency (DIA) information	610
292a	Privacy Act of 1974	614
293	Defense Criminal Investigative Service implementation of the Privacy Act of 1974	619
294	Obtaining information from financial institutions: Rights to Financial Privacy Act of 1978	622
295	Availability to the public of Defense Mapping Agency information	630
295c	Personal privacy and rights of individuals regarding their personal records, Defense Mapping Agency	633
296	Publications of proposed and adopted regulations affecting the public	639
297	DoD newspaper and civilian enterprise publications	642
298	Freedom of information practices	658
298a	Defense Investigative Service, Privacy Act of 1974.	660
299	Public access to records	669
299a	Privacy Act systems of records—disclosures and amendment procedures—specific exemptions, National Security Agency	671

SUBCHAPTER Q—CIVIL RIGHTS

300	Nondiscrimination in Federally assisted programs of the Department of Defense—effectuation of Title VI of the Civil Rights Act of 1964	678
301	Equal opportunity in off-base housing	689
302-349	[Reserved]	

SUBCHAPTER R—CHARTERS

350	Assistant Secretary of Defense (Communications, Command, Control, and Intelligence)	699
351	Under Secretary of Defense for Research and Engineering	700
351b	Assistant Secretary of Defense (Research and Technology)	702
351c	Assistant Secretary of Defense (Development and Support)	704
352	Assistant Secretary of Defense (Manpower, Installations, and Logistics)	706
353	Assistant Secretary of Defense (Legislative Affairs)	709
354	Defense Intelligence Agency	710
355	Director of Policy Review	714

Part *Page*

356 Washington Headquarters Services 716

357 Defense Contract Audit Agency 718

358 Defense Advanced Research Projects Agency 722

359 Defense Logistics Agency 725

360 Defense Mapping Agency 735

361 Defense Investigative Service 739

362 Defense Communications Agency 744

363 Defense Security Assistance Agency 753

364 Assistant to the Secretary of Defense (Atomic Energy) 755

365 Office of Economic Adjustment 756

366 Director, Program Analysis and Evaluation 759

367 Assistant Secretary of Defense (Health Affairs) 760

368 Functions of the Department of Defense and its major components 762

369 Delegation of authority to Deputy Secretary of Defense 768

370 DoD Health Council 769

371 Organization of the Joint Chiefs of Staff and relationships with the Office of the Secretary of Defense 771

372 American Forces Information Service 773

372a American Forces Radio and Television Service (AFRTS) 776

373 Inspector General of the Department of Defense 785

375 Assistant Secretary of Defense (Public Affairs) 790

376 Joint Tactical Command, Control, and Communications Agency (JTC^{3}A) 793

378 Assistant to the Secretary of Defense (Intelligence Oversight) 797

379 Assistant Secretary of Defense (Reserve Affairs) 798

380 Director of Operational Test and Evaluation 800

381-399 [Reserved]

SUBCHAPTER M—MISCELLANEOUS

PART 190-[Reserved]

PART 191—THE DEPARTMENT OF DEFENSE EQUAL OPPORTUNITY PROGRAM

Sec.

191.1 Purpose.
191.2 Applicability and scope.
191.3 Definition of terms.
191.4 Policy.
191.5 Responsibility.
191.6 Reporting requirements.

AUTHORITY: Sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133.

SOURCE: 42 FR 26422, May 24, 1977, unless otherwise noted.

§ 191.1 Purpose.

This part (a) outlines the Department of Defense Equal Opportunity Program; (b) expands and updates the Civilian Equal Employment Opportunity policies which implements Executive Order 11246 and Civil Service Commission Federal Personnel Manual Chapter 713; (c) assigns additional responsibilities to comply with Pub. L. 92-261, Equal Employment Opportunity Act of 1972, and (d) assigns responsibility for assuring DoD-wide compliance with equal employment opportunity goals.

§ 191.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified Commands (referred to collectively as "DoD Components").

(b) This part applies to military personnel, civilian employees, nonappropriated fund employees, applicants for DoD employment and personnel of firms under contract to or seeking contracts with the Department of Defense (DoD Directive 1100.11).[1]

(c) This part does not apply the provisions of either the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 630-634) or Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-2000e-17) to military personnel.

§ 191.3 Definition of terms.

For the purposes of this part, "Equal Opportunity" means equal consideration and treatment based upon merit, fitness, and capability. "Department of Defense Equal Opportunity Program (DoD-EOP)" means the DoD wide program of equal opportunity that is accomplished through the military equal opportunity and civilian equal opportunity efforts by DoD Components.

"Military Equal Opportunity Program" means efforts by each uniformed member is assured an equal opportunity in the pursuit of the military profession.

"Civilian Equal Opportunity Program" means activities to promote Equal Employment Opportunity for DoD civilian employees, as well as those employed by applicable Federal contractors.

"Affirmative Action Plans" means comprehensive public documents which require qualified good faith goals and timetables of all DoD Components in order to achieve equal opportunity for DoD personnel.

§ 191.4 Policy.

It is the policy of the Department of Defense to:

(a) Actively oppose arbitrary discrimination based on race, color, religion, sex, or national origin.

(b) Require DoD Components to enforce the equal opportunity provisions of this Part in the development of their operating policies and programs.

(c) Require each Department of Defense contractor to comply with the policy of equal employment opportunity in accordance with parts 2-4 of Executive Order 11246, as amended by Executive Order 11375, DoD Directive 1100.11 (§ 191.2(b)) and the Armed Services Procurement Regulation.

---

[1] Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120 Attention: Code 300.

(d) Ensure that all on-base activities, and any off-base activities made available to any Department of Defense personnel and their dependents are open, as appropriate, to any DoD personnel or their dependents regardless of race, color, religion, sex, age, or national origin.

(1) Any organization or activity which does not meet this requirement shall be denied the use of military facilities and resources in accordance with 32 FR 237. This policy applies equally to those organizations which may arbitrarily discriminate by the nature of their organizational constitutions, bylaws, rules, and regulations as well as to those which in the judgement of the cognizant commanders are engaged in de facto discrimination irrespective of the content of their organizational constitutions, bylaws, rules and regulations.

(2) Organizations which use on-base facilities must satisfy the commander concerned that they do not discriminate against DoD personnel through their actual membership practices or in any of their activities.

(e) Oppose discrimination in off-base housing, directed against all Department of Defense personnel or their dependents. Each commander shall take the initiative to overcome such discrimination and to impose appropriate sanctions in housing cases as required by DoD Instruction 1100.16.

(f) Impose the off-limits sanction in accordance with the Armed Forces Disciplinary Control Board procedures in cases of discrimination involving places of public accommodation outside military installations.

(g) Use the chain of command to promote, support and enforce the DoD Equal Opportunity Program. The chain of command is the primary channel to correct discriminatory practices and for communication of race relations and equal opportunity matters.

§ 191.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower and Reserve Affairs) (ASD(M&RA)) shall:

(1) Represent the Secretary of Defense in equal opportunity as it impacts on all DoD activities, policies, and programs in accordance with DoD Directive 5120.27.[1]

(2) Give direction to DoD-wide programs to ensure equal opportunity for uniformed members and civilian employees, including issuance and implementation of written instructions as necessary.

(3) Use the established Office of the Deputy Assistant Secretary of Defense (Equal Opportunity) to discharge the equal opportunity responsibilities.

(4) Ensure that DoD Components fulfill the requirements of this Part.

(5) Provide policy direction in accordance with DoD Directive 1322.11 to the Defense Race Relations Institute, and serve as Chairman of the Race Relations Education Board.

(6) Establish and monitor, as appropriate, specific goals to be included in the Affirmative Action Plan(s) of each DoD Component.

(7) Provide policy direction and guidance to the Defense Contract Compliance Program in accordance with the provisions of DoD Directive 1100.11.[1]

(8) Review and take action on, as appropriate, investigations by the Military Departments and Defense Components of Equal Opportunity or discrimination complaints received by the DoD.

(b) The head of each DoD Component shall be responsible for equal opportunity within his or her respective jurisdiction and shall:

(1) Assure that all equal opportunity policies and programs are understood and executed at all levels of organization.

(2) Establish means to identify Military Equal Opportunity and Civilian Equal Employment Opportunity problems.

(3) Formulate, maintain, and carry out Affirmative Action Plans which establish quantified good faith goals, timetables, and accountability in personnel management.

(4) Submit their Affirmative Action Plan(s) covering the Military Equal Opportunity Programs and Civilian Equal Employment Opportunity Programs to the Assistant Secretary of

---

[1] See footnote 1 to § 191.2.

BEST COPY AVAILABLE

Defense (Manpower and Reserve Affairs) for review and approval.

(5) Develop management information, personnel accounting and reporting systems, and devise measurements to determine progress for each quantified Affirmative Action Plan goal.

(6) Forward to the ASD(M&RA) an annual report outlining the progress being made in achieving the established Equal Opportunity goals of Affirmative Action Plan(s).

(7) Consider demonstrated compliance with equal opportunity objectives, including efforts in achieving the goals of the Affirmative Action Plans, as an important criterion in evaluation for promotion of military and civilian personnel at the supervisory and management levels.

(8) Take appropriate disciplinary action against any official, who has committed an act of arbitrary discrimination based on race, color, religion, sex, age or national origin. See DoD Directive 1100.11 for regulations concerning noncompliance by business firms.

(9) Provide information and data to ASD(M&RA) as required for program development purposes.

(10) Amend regulations or practices to eliminate arbitrary discrimination based upon race, religion, color, sex, age or national origin that impede equal opportunity for all military personnel and civilian employees. This requirement does not apply to those service regulations which implement statutes requiring differing treatment of military personnel based on age or sex.

(11) Implement a continuing educational program for General Flag Officers, commanders and key staff personnel, as appropriate, and designated civilian managers which will assist them in managing Military Equal Opportunity and/or Civilian Equal Employment Opportunity Program within their respective Military Departments.

(12) Ensure that all military personnel receive race/human relations education in compliance with DoD Directive 1322.11.[1] Civilian personnel shall receive race/human relations education based on specific needs as determined by the Heads of DoD Components.

(13) Establish sufficient full-time staff positions and devote sufficient resources to adequately carry out all equal opportunity programs.

(14) Ensure that Military Equal Opportunity and discrimination investigations are coordinated with appropriate Equal Opportunity/Race Relations or comparable officers.

(15) Ensure that Civilian Equal Employment Opportunity investigations are to be conducted in concert with the procedures prescribed by the Civil Service Commission in accordance with the provisions of the Civil Service Commission Federal Personnel Manual, Chapter 713.

§ 191.6 Reporting requirements.

(a) The first report was due September 30, 1976 and is due on that date.

(b) Interagency Report Control Number 1046-CSC-SA has been assigned this report requirement.[2]

PART 192—ENGINEERING FOR TRANSPORTABILITY

Sec.

192.1 Reissuance and purpose.
192.2 Applicability.
192.3 Explanation of terms.
192.4 Policy.
192.5 Responsibilities.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 43 FR 3560, Jan. 26, 1978, unless otherwise noted.

§ 192.1 Reissuance and purpose.

This part reissues 32 CFR Part 192 to provide policy guidance and assign responsibilities for assuring that items of materiel, equipment and transportation systems are so designed, engineered, modified, and constructed that the required quantities can be efficiently moved by available means of transportation.

---

[1] See footnote 1 to § 191.2.

[2] 1046-CSC-SA (Note: Defense Department makes report annually, SA (semiannual) frequency does not apply).

§ 192.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Logistics Agency (DLA) (hereafter referred to as "DoD Components"). The term "Military Services" as used herein refers to the Army, Navy, Air Force and the Marine Corps.

§ 192.3 Explanation of terms.

As used herein, the following definitions apply:

(a) *Engineering for Transportability* is the performance of those functions required in identifying and measuring the limiting criteria and characteristics of transportation systems; and the integration of these data into the design of materiel to utilize operational and planned transportation capability effectively. Limiting criteria and characteristics will include those created by standard unitizing method (pallets, containers). Transportability engineering criteria will thus consider modularity to improve cube utilization and dimensional standardization for military cargo as well as maximum dimensions and total weight.

(b) *Transportability* means the inherent capability of materiel to be moved by towing, by self-propulsion, or by carrier via railways, highways, waterways, pipelines, oceans and airways.

§ 192.4 Policy.

(a) Transportability shall be a major consideration in:

(1) Formulating the priority of characteristics to be considered in the design of any new or modified item of materiel, or adoption of a commerical nondevelopmental item.

(2) Modifying existing transportation systems, and

(3) Developing integrated logistics support for systems and equipment in accordance with DoD Directive 4100.35 [1]

(b) When planning and designing new or modified materiel, transportability criteria for all possible modes of transportation to be employed shall be considered in order to assure that items are so designed and constructed that they can be efficiently moved by available means of transportation.

(c) Equipment to be developed or procured will be designed so that its outside dimensions and gross weight (axle loads for vehicles) will permit handling, movement, and transfer among the various transportation systems that are expected to be available during its operating life.

(d) Only in exceptional cases may equipment be designed which will require special or unique arrangement of schedules, right-of-ways, clearances, or other operating conditions. In addition, equipment may be designed to the capabilities of a specific mode of transportation only when it has been determined that more restrictive modes will not be used or that such design is necessary to meet required capabilities.

(e) During the design, development, or modification of equipment which is large, bulky, heavy, or sensitive to shock and vibration, full consideration will be given to transportation, handling, tiedown, and slinging points, to disassembly capability for transportation purposes, ease of onsite reassembly for use, and safety during transportation. Self-propulsion will also be considered in the design where applicable and necessary.

(f) Transportability design will specifically consider the impact of international standardization of intermodal containerization in standardizing and facilitating worldwide distribution.

(1) *Intermodal containerization.* International container systems are designed to International Standards Organization (ISO) dimensional, strength and lift specifications as prescribed by DoD Instruction 4500.37.[1] Accordingly, cargo and equipment packaging considerations must take mode of transportation into account. Design considerations should include standardizing small containers, inserts or other unit loads, which are modular to the interior dimensions of the containers to optimize cube utilization.

---

[1] Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, attention Code 301.

(2) *Shelters and special purpose vans.* Specific emphasis will be placed on the design or modification of shelters and special purpose vans to ensure that they conform to International Standards Organization (ISO) dimensional, and strength specifications as directed in DoD Instruction 4500.37,[1] as well as emphasis on the packaging and design/redesign of equipment for use within such shelters/special purpose vans.

§ 192.5 Responsibilities.

(a) The Secretaries of the Army, Navy, and Air Force shall designate, within existing manpower ceilings, an operating agency at an appropriate level within their respective Departments which will be responsible for:

(1) Issuing, under the sponsorship of the Secretary of the Army, Joint Army, Navy, Air Force and Marine Corps, regulations implementing this Part for uniform use by all DoD Components.

(2) Issuing, under the sponsorship of the appropriate Military Department (see DoD Directives 5160.2, 5160.10, and 5160.53),[1] joint transportability criteria covering (i) modes of transportation and terminals, and (ii) pertinent characteristics of transportation equipment.

(3) Ensuring that the transportability of new materiel is determined by analysis or testing during the Research, Development, Test and Evaluation (RDT&E) programs or prior to procurement for commercial nondevelopment materiel and documenting test results for transportability guidance.

(4) Issuing, under the sponsorship of the appropriate Military Department, joint transportability guidance for materiel for which each Military Department has prime responsibility.

(5) Ensuring that joint Military Service coordination is effected prior to modification of a transportation system which may affect the transportability requirements of another Military Service.

(b) The Secretary of the Navy shall be responsible for: (1) Coordinating DoD transportability interests in common-user ship construction and modification programs with appropriate Federal agencies, and (2) integrating the foreseen needs of the DoD Components into these programs.

(c) The Secretary of the Air Force shall be responsible for: (1) Coordinating DoD transportability interests in common-user aircraft construction and modification programs with appropriate Federal agencies, and (2) integrating the foreseen needs of the DoD Components into these programs.

(d) The Secretary of the Army shall be responsible for: (1) Coordinating DoD transportability interests in common-user land transportation programs with Federal and State agencies in the United States and with appropriate agencies overseas, and (2) integrating the foreseen needs of the DoD Components into these programs. (See 32 CFR Part 193 concerning coordination of highways for National Defense matters with Federal and State agencies.)

PART 193—HIGHWAYS FOR NATIONAL DEFENSE

Sec.
193.1 Purpose and scope.
193.2 Applicability.
193.3 Policy.
193.4 Authorities and responsibilities.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 33 FR 13016, Sept. 14, 1968, unless otherwise noted.

§ 193.1 Purpose and scope.

This part sets forth policy, responsibilities, and authority in matters pertaining to Department of Defense highway needs and, when appropriate, to the highway needs of other Federal agencies, during peacetime and emergencies in the United States and its territories and possessions.

§ 193.2 Applicability.

The provisions of this part apply to all components of the Deparment of Defense.

---

[1] Filed as part of original. Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120 Attention: Code 301.

§ 193.3 Policy.

In order to insure that the national defense is served by adequate, safe and efficient highway transportation, it shall be the policy of the DoD to (a) integrate the highway needs of the national defense into the civil highway programs of the various State and Federal agencies, and (b) cooperate with those agencies in matters pertaining to the use of public highways and in planning their development and construction.

§ 193.4 Authorities and responsibilities.

(a) The Secretary of the Army, as the Single Manager for Military Traffic, Land Transportation, and Common-User Ocean Terminals (see DoD Directive 5160.53, Single Manager Assignment for Military Traffic, Land Transportation, and Common-User Ocean Terminals, March 24, 1967 (32 FR 5295)), is hereby designated as the Executive Agent for the Department of Defense (hereinafter referred to as the Executive Agent), in matters pertaining to public highways to serve the national defense in meeting both peacetime and mobilization highway transportation needs in the United States, its territories and possessions; and highway needs of other Federal agencies, when appropriate. The Executive Agent, or his designee, under the policy guidance of the Assistant Secretary of Defense (Installations and Logistics), will:

(1) Coordinate the defense transportation interest in public highways, including the implementation of subsection (h), section 210 of Title 23 U.S. Code, and integrate foreseen DoD highway needs and operational requirements into the highway programs of the United States, its territories and possessions.

(2) Review and analyze DoD access road needs, and, when appropriate, those of other Federal agencies from the standpoint of approved transportation engineering practices, statutory provisions, and policies and procedures of the Bureau of Public Roads, Department of Transportation.

(3) Represent the DoD in matters pertaining to highways to serve the national defense in liaison with the Bureau of Public Roads, the American Association of State Highway Officials, and other appropriate Government and non-Government agencies.

(4) Certify on behalf of the Secretary of Defense to the appropriate Government agency, the public highway needs of the DoD and, when appropriate, the needs of other Federal agencies, as being important to the national defense. (See section 210, Title 23, U.S. Code.)

(5) Advise and assist the Assistant Secretary of Defense (Comptroller) in matters pertaining to the (i) preparation and justification of budget requirements for defense access road needs, and (ii) transfer of funds appropriated for this purpose to the Bureau of Public Roads.

(6) Develop and maintain an efficient relationship between the design of military vehicles and State and Federal standards for the design of public highways to ensure the effective and efficient utilization of such highways by military vehicles.

(7) Provide highway traffic engineering services to DoD components, when requested.

(8) Insure effective cooperation between the Department of Defense and state highway authorities in matters pertaining to special defense utilization of public highways.

(b) The other DoD Components will:

(1) Maintain official liaison with the Executive Agent in matters pertaining to the provision of public highways to serve the national defense and the access road needs of new or expanded DoD installations and activities.

(2) Furnish the Executive Agent with information and data on current and potential access-road and highway-system needs on request.

(c) The Secretaries of the Military Departments, or their designees, are authorized to act for the Secretary of Defense under the provisions of subsection (h) of section 210, Title 23, U.S. Code, in determining, in connection with the funding of contracts for the construction of classified military installations and facilities for ballistic missiles, that construction estimates and the bids of contractors did not include allowances for repairing road damages.

(d) The Secretaries of the Military Departments and the Directors of DoD Agencies will program, budget, and finance for the responsibilities assigned by this part and their access road requirements (see Pub. L. 90-180, Military Construction Appropriation Act, fiscal year 1968, and successor statutes) in accordance with applicable program and financial guidelines and procedures.

PART 194—INTERNATIONAL CO-PRODUCTION PROJECTS AND AGREEMENTS BETWEEN THE UNITED STATES AND OTHER COUNTRIES OR INTERNATIONAL ORGANIZATIONS

Sec.
194.1 Purpose.
194.2 Applicability and scope.
194.3 Concept.
194.4 Objectives and policies.
194.5 Responsibilities and procedures.
194.6 Security.
194.7 Reports required.
194.8 Effective date and implementation.

AUTHORITY: 5 U.S.C. 301

SOURCE: 33 FR 13016, Sept. 14, 1968, unless otherwise noted.

§ 194.1 Purpose.

This part supplements the international logistics policies established in DoD Directive 5100.27, Delineation of International Logistic Responsibilities, December 29, 1964;[1] DoD Directive 5132.3 (28 FR 7611); DoD Instruction 2000.8, Cooperative Logistic Support Arrangements, February 14, 1964;[1] Part 258 of this subchapter; DoD Instruction 2015.4, Mutual Weapons Development Data Exchange Program and Defense Development Exchange Program, November 5, 1963;[1] DoD Directive 2100.3, "U.S. Policy Relative to Commitments to Foreign Governments Under Foreign Assistance Programs, July 11, 1963.[1] Its purpose is to prescribe general policies and principles governing international co-production projects negotiated under agreements between the U.S. Government and eligible foreign governments, international organizations, foreign producers or other approved agencies. Policy guidance pertaining to the general areas of the Military Assistance Program (MAP), Foreign Military Sales (FMS), and international Cooperative Logistics Support Arrangements (CLSA) is not affected by this part.

§ 194.2 Applicability and scope.

The provisions of this part are applicable to those offices responsible for negotiation, implementation, monitorship and financial and management control of the co-production projects within OSD, DSA and the Departments of the Army, Navy, and Air Force.

§ 194.3 Concept.

(a) The term "co-production" as used herein encompasses any program wherein the U.S. Government, under the aegis of an international diplomatic level or Ministry of Defense-to-Department of Defense agreement, either directly through the FMS program, or indirectly through specific licensing arrangements by designated commercial firms, enables an eligible foreign government, international organization or designated commercial producer to acquire the "know-how" to manufacture or assemble, repair, maintain and operate, in whole or in part, a specific weapon, communication or support system, or an individual military item. The "know-how" furnished may include research, development production data and/or manufacturing machinery or tools, raw or finished materiel, components or major subassemblies, managerial skills, procurement assistance or quality-control procedures. Third country sales limitations and licensing agreements are also included as required.

(b) Co-production may be limited to the assembly of a few end-items with a small input of local country parts, or it may extend to a major manufacturing effort requiring the build-up of capital industries.

---

[1] Copies available from Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

§ 194.4 Objectives and policies.

(a) The major objectives to be attained through co-production projects are to:

(1) Enable eligible countries to improve military readiness through expansion of their technical and military support capability.

(2) Promote United States-Allied standardization of military materiel and equipment, which, in turn, would generate the establishment of uniform logistics support, procedures and expanded multinational operational capabilities.

(b) Co-production programs directly benefit the United States through:

(1) Creating in-country compatability with the U.S. standardized equipment, thereby creating Allied capability of supporting deployment of U.S. forces.

(2) Promoting the standardization of materiel or equipment to integrate and strengthen international military operations in times of emergency or hostilities.

(3) Encouraging multinational acceptance of strategic and tactical concepts and doctrine through the utilization of common military materiel

(4) Encouraging the creation of complementary forces in Allied countries.

(5) Establishing or broadening the base for common and interchangeable logistics among free or Allied nations.

(6) Serving to improve procurement, production, contract administration and mutual support capability of friendly Allied nations.

(c) Co-production is considered to be an important component of the U.S. military foreign sales program and, as such, represents an essential element of U.S. foreign policy. Accordingly, it is DoD policy that initiation of co-production project agreements will be encouraged and supported by all elements of DoD under the following circumstances. When they:

(1) Advance the objectives outlined in paragraphs (a) and (b) of this section.

(2) Supplement and reinforce the U.S. FMS program.

(3) Are in the best interest of the United States.

§ 194.5 Responsibilities and procedures.

(a) Co-production projects may be initiated by ASD(ISA) or, subject to prior ASD(ISA) approval, by the Military Departments; the Military Assistance Advisory Groups; and by authorized representatives of foreign governments and international organizations.

(1) The cognizant DoD component will ensure appropriate coordination with ASD(ISA) and furnish technical and negotiating assistance as required.

(2) After the agreement is signed, the appropriate DoD component will perform necessary managerial and reporting functions.

(b) In conformance with responsibilities assigned in DoD Directive 5100.27.

(1) The Assistant Secretary of Defense (International Security Affairs) will:

(i) Develop and coordinate DoD positions for the negotiation of co-production agreements with foreign governments and international organizations; and

(ii) Either conduct negotiations for specific agreements, or delegate this responsibility to an appropriate DoD component.

(2) The Assistant Secretary of Defense (Installations and Logistics) will:

(i) Assure during coordination of formal agreements, that the materiel to be committed under the co-production project will not adversely affect the U.S. defense supply or production base, or further limit critical materiel; that consideration had been given to the future logistical support of the equipment to be produced; and

(ii) Monitor and act as OSD coordinator for implementation of co-production projects under formal agreements, in coordination with other elements of the Office of the Secretary of Defense, as required.

(3) The Office of the General Counsel of the Department of Defense will assure necessary legal clearance, as required, prior to formalization of co-production project agreements.

(4) The Assistant Secretary of Defense (Comptroller) will assist the ASD(ISA) and the ASD(I&L) during coordination, as required, of formal co-production agreements by providing

necessary DoD representation and financial guidance with respect to pricing policies for U.S. military services and equipment, cost sharing, and reporting requirements under co-production agreements as they relate to international balance of payments.

(5) Other OSD organizational elements will assist ASD(I&L), as required, in assuring that the terms and conditions of co-production project agreements are met.

§ 194.6 Security.

(a) Classified information and materials will be treated as exchanges between those governments involved and will be safeguarded by each government in accordance with existing agreements.

(b) In addition to adherence to existing security agreements, a security annex or clause will be developed as a part of the co-production agreement which will cover all security factors involved.

§ 194.7 Reports required.

(a) A short narrative type report will be submitted to ASD(I&L) by the cognizant DoD component on a quarterly basis covering all formalized co-production projects and agreements including pending agreements with a high potential of being finalized within the next three (3) quarters. The report will briefly state project, project officer, background highlights, current production and status including anticipated and approximate monetary return to the United States, current problem areas (if any) and future major events or milestones. This reporting requirement has been assigned Report Control Symbol DD-I&L (Q)834.

(b) This report will be submitted in triplicate to OASD(I&L) by the close of the last working day of the month following the close of the quarter. The first report under this part will cover the quarter ending March 31, 1968, and be due April 30, 1968. In addition, copies will be forwarded to the appropriate Unified Commands and MAAG's of the countries involved. Further distribution may be prescribed by the Military Department concerned.

§ 194.8 Effective date and implementation.

This part is effective immediately and encompasses all co-production agreements in effect or pending on the date of this part, and such agreements consummated subsequently.

PART 195—CONFIGURATION MANAGEMENT

Sec.
195.1 Reissuance and purpose.
195.2 Applicability.
195.3 Definitions.
195.4 Policy.
195.5 Responsibilities.

AUTHORITY: 10 U.S.C. 2202.

SOURCE: 44 FR 31178, May 31, 1979, unless otherwise noted.

§ 195.1 Reissuance and purpose.

This part consolidates into a single document 32 CFR Parts 195 and 195a, and updates and redefines policies for configuration management of materiel including systems, equipment, computer programs, facilities and other designated items.

§ 195.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components"), and shall be applied throughout the life cycle of configuration items.

§ 195.3 Definitions.

(a) *Configuration.* The functional and physical characteristics of materiel as described in technical documents and achieved in a product.

(b) *Configuration items.* Materiel items designated by DoD Components for configuration management. They may differ widely in complexity, size, and kind. Examples are an aircraft, ship, mobile test unit, navigation system, embedded computer, computer program, facility, electronic system, test meter or a round of ammunition.

(c) *Configuration management.* The engineering management procedure that includes the following:

(1) *Configuration identification.* Selection of the documents which identi-

BEST COPY AVAILABLE

fy and define the configuration baseline characteristics of an item.

(2) *Configuration control.* Controlling changes to the configuration and its identification documents.

(3) *Configuration status accounting.* Recording and reporting the implementation of changes to the configuration and its identification documents.

(4) *Configuration audit.* Checking an item for compliance with the configuration identification.

(d) *Other.* Expanded and additional definitions are contained in the Joint Services Regulation, "Configuration Management," July 1, 1974.[2]

§ 195.4 Policy.

(a) It is the policy of the Department of Defense to apply configuration management to ensure operational efficiency and control cost, and to achieve uniformity in configuration management procedures and practices within the Department of Defense and between DoD and industry.

(b) Specific policy for application of configuration management is as follows:

(1) The degree of configuration management applied for an item shall be appropriately tailored to be consistent with the complexity, size, quantity, intended use, mission criticality and life-cycle phase of the item DoD Directives 4120.21,[1] "Specifications and Standards Application," April 9, 1977, 5000.1,[1] "Major Systems Acquisition," January 18, 1977, 7920.1,[1] Life Cycle Management of Automated Information Systems (AIS)," October 17, 1978.

(2) Appropriate DoD configuration management of interface baseline characteristics shall be applied to any developmental item, before approval for full-scale engineering development, Milestone II (DoD Directives 5000.1 [1] and 7920.1 [1]), if the item is required to interface with specified configuration baselines of other configuration items under development, in production or in supply; or, if the item is required to be compatible with an existing or planned maintenance program.

(3) Appropriate DoD configuration management shall be applied to any item to be developed wholly or partially with Government funding, immediately following approval for full-scale engineering development, Milestone II.

(4) For configuration items wholly developed with private funding and procured by the Government, appropriate configuration management shall be applied to the configuration baseline when the procurement is initiated.

(5) During the deployment/operation/support phase, appropriate configuration management shall be continued to the extent required for readiness support.

(6) In the acquisition of major systems, any intended exception to this Part or any intended deviation from the fundamental elements of configuration management required by this Directive and as further set forth in the Joint DoD Services/Agencies Regulation [2] shall be proposed, with justification, in the System Decision Paper (DoD Directive 7920.1,[1] and in the Acquisition Strategy Plan (DoD Directive 5000.2,[1] "Major Systems Acquisition Process," January 18, 1977), by the cognizant DoD Component to the Office of the Secretary of Defense. For other than major systems acquisitions, any such intended exceptions or deviations shall be proposed for approval by the appropriate authority delegated to act for the Head of the cognizant DoD Component. For any acquisition, tailoring of the application of specifications and standards specified in the Joint DoD Services/Agencies Regulation [2] shall be in accordance with DoD Directive 4120.21.[1]

§ 195.5 Responsibilities.

(a) *The Under Secretary of Defense for Research and Engineering (USDR&E)* shall prescribe overall management policy for DoD configuration management practices.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120, Attention: Code: 301.

[2] May be obtained by writing the Commanding Officer, Naval Publications and Forms Center, ATTN: NPFC 105, 5801 Tabor Avenue, Philadelphia, PA 19120

(b) Following acquisition and deployment of materiel, the *Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)* shall ensure effective implementation of DoD configuration management during operational logistics functions (see § 195.4(b)).

(c) *The Secretary of the Navy* or a designee [3] shall:

(1) In coordination which the other DoD Components, maintain the Joint DoD Services/Agencies Regulation [2] and any other joint documents considered necessary.

(2) Provide the Chairperson for the DoD Configuration Management Committee.

(d) *The Head of each DoD Component* shall:

(1) Designate for specific, individual items or categories of items, the technical organization, office or individual having authority and responsibility for configuration management during each life-cycle phase of the items being procured. When more than one DoD Component is involved in the acquisition, modification or support of an item, the DoD Component designated by the Secretary of Defense to have primary responsibility shall develop and document intercomponent joint agreements for configuration management of the item.

(2) Provide a representative for membership and active participation on the DoD Configuration Management Committee.

(e) *The DoD Configuration Management Committee* shall provide necessary support in the conduct of the DoD Configuration Management Program in accordance with this Directive and the Joint DoD Services/Agencies Regulation.

(1) Membership of the committee includes one representative of each DoD Component. Each member is authorized and responsible for presenting the consolidated position of the respective DoD Component on matters concerning DoD configuration management policy, implementation and standard practices. When solicited, the committee provides comments to the DoD acquisition program reviewing authorities regarding the application of configuration management.

(2) A representative from the national Aeronautics and Space administration participates in the activities of the committee in a consulting capacity.

PART 196—WORK BREAKDOWN STRUCTURES FOR DEFENSE MATERIEL ITEMS

Sec.

196.1 Purpose.
196.2 Applicability and scope.
196.3 Definitions.
196.4 Objective.
196.5 Policy.
196.6 Approval.
196.7 Waivers to this part.
196.8 Detailed guidance.
196.9 Summary work breakdown structures (summary WBS) for categories of Defense Materiel Items.
196.10 Development and relationships of WBS(s) during acquisition.

AUTHORITY: 10 U.S.C. 2202.

SOURCE: 33 FR 16110, Nov. 2, 1968, unless otherwise noted.

§ 196.1 Purpose.

This part establishes Department of Defense policy governing the preparation and application of Work Breakdown Structures for use during the acquisition (Engineering and Operational Systems Development, and follow-on production) of systems, equipments, or other materiel items, hereafter referred to as defense materiel items.

§ 196.2 Applicability and scope.

The provisions of this part apply to the Military Departments and Defense Agencies (hereafter referred to as DoD Components).

§ 196.3 Definitions.

(a) *Defense materiel item.* A term used within Department of Defense to identify an aggregation of hardware/software which satisfies a specific end use function. A defense materiel item usually is a system or major equipment that is established as an integral program element, or is identified as a project within an aggregated program element, of the Five Year Defense Program (DoD Directive 7045.7, "Review and Approval of Changes to the Five Year Defense Program," December 22, 1967).[1]

---

[2] See footnote 2 to § 195.3.

[3] Authority for the above actions has been delegated by the Secretary of the Navy to the Chief of Naval Material.

(b) *Work breakdown structure (WBS).* A product-oriented family tree, composed of hardware, software, services and other work tasks, which results from project engineering effort during the development and production of a defense materiel item, and which completely defines the project/program. A WBS displays and defines the product(s) to be developed or produced and relates the elements of work to be accomplished to each other and to the end product.

(1) *Summary work breakdown structure (Summary WBS).* The upper three levels of a WBS prescribed by this part in § 196.9 and having uniform element terminology, definition and placement in the family-tree structure. These three levels have been organized and identified in accordance with the following nomenclature:

Level 1. The entire defense materiel item, e.g., the Minuteman ICBM System, the LHA Ship System, or the XM-138 Self-Propelled Howitzer System. Level 1 is usually directly identified in the DoD programing/budget system either as an integral program element or as a project within an aggregated program element.

Level 2. Major elements of the defense materiel item, e.g., a ship, an air vehicle, a tracked vehicle; or aggregations of services, data and activities, e.g., systems tests and evaluation.

Level 3. Elements subordinate to Level 2 major elements, e.g., an electric plant, an airframe, the power package/drive train; or types of services, e.g., technical evaluation.

(2) *Project Summary Work Breakdown Structure (Project Summary WBS).* A Summary WBS tailored to a specific defense materiel item by selecting applicable elements from one or more Summary WBS(s) (§ 196.9) or by adding/substituting equivalent elements unique to the project.

(3) *Contract Work Breakdown Structure (Contract WBS).* The complete WBS for a contract, developed and used by a contractor in accordance with MIL-STD-881[2] and the contract work statement. The Contract WBS comprises those Project Summary WBS elements included in the contract, as extended by the contractor to cover the lower levels of WBS.

(4) *Project Work Breakdown Structure (Project WBS).* The complete WBS for the project, containing all WBS elements related to the development and/or production of the defense materiel item. The Project WBS evolves from the Project Summary WBS, extended to include all Contract WBS(s) and equivalent WBS(s) resulting from DoD in-house efforts.

(c) *WBS element.* A discrete portion of a Work Breakdown Structure. A WBS element may be either an identifiable product, set of data, or a service.

(d) *Systems engineering.* The application of scientific and engineering efforts to (1) transform an operational need into a description of system performance parameters and a system configuration through the use of an iterative process of definition, synthesis, analysis, design, test, and evaluation; (2) integrate related technical parameters and assure compatibility of all physical, functional, and program interfaces in a manner which optimizes the total system definition and design; (3) integrate reliability, maintainability, safety, human and other such factors into the total engineering effort.

§ 196.4 Objective.

The overall objective of a WBS is to translate the results of the systems engineering of a defense materiel item into a structure of products and services comprising the entire work effort. As tailored to a specific project, the WBS is intended to provide a consistent, visible framework that facilitates:

---

[1] Filed as part of original. Copies available from Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

[2] When published, will be available from Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

(a) Planning and assigning management and technical responsibilities; and,

(b) Controlling and reporting the progress and status of engineering efforts, resource allocations, cost estimates, expenditures, and procurement actions throughout the development and production of a defense materiel item.

§ 196.5 Policy.

(a) *Application.* A Project WBS shall be prepared for each project, as follows:

(1) *Mandatory.* (i) All new defense materiel items (or major modifications) being established as an integral program element of the Five Year Defense Program (FYDP) (DoD Directive 7045.7[1]) in Engineering Development or Operational Systems Development;

(ii) All new defense materiel items (or major modifications) being established as a project within an aggregated program element in Engineering Development or Operational Systems Development, where the project is estimated to exceed $10 million in RDT&E financing; or

(iii) All production follow-on of paragraphs (a)(1)(i) and (ii) of this section.

(2) *Otherwise designated.* A WBS may be employed in whole or in part for other defense materiel items entering Engineering Development or Operational Systems Development, or follow-on production, at the discretion of the DoD Component, or when directed by the Director of Defense Research and Engineering.

(b) *Preparation.* While the categories and elements displayed in § 196.9 normally will provide the basis for constructing Summary WBS(s), deviations are encouraged when they result from project needs determined through the systems engineering process. Proposed deviations shall be considered in accordance with the following paragraphs.

(1) *The Project Summary WBS* shall be prepared by the DoD Component by selecting elements applicable to the project from one or more of the category Summary WBS's shown in § 196.9. The Project Summary WBS elements shall be tailored to the project objectives and utilize uniform nomenclature, definition and structural placement in accordance with MIL-STD-881, "Military Standard Work Breakdown Structures for Defense Materiel Items"[2] and § 196.9. However, when elements of the Summary WBS's are not applicable because of an item's unique configuration or other requirements, or when additional WBS element selection is needed below the Summary WBS level, substitute or additional elements may be used to construct the Project Summary WBS. Any such deviations or additions shall be identified in the Technical Development Plan, DoD Directive 3200.6, "Reporting Research, Development and Engineering Program Information," June 7, 1962,[1] or other appropriate planning document for the project.

(i) A preliminary Project Summary WBS (the development and relationship of WBS's during acquisition is illustrated in § 196.10) is normally developed from the results of the preliminary systems engineering conducted during the Concept Formulation period or its equivalent. This systems engineering identifies the category of defense materiel item and summary level WBS elements considered to be most suitable to satisfy the operational need. The Director of Defense Research and Engineering may direct the establishment of WBS elements at or below the Summary WBS level, if specific items are considered to be critical to a project need.

(ii) During Contract Definition (Part 191 of this subchapter), or equivalent definition efforts, changes may be proposed to this preliminary Project Summary WBS. The preliminary Project Summary WBS is not intended to be constraining. Rather, it is intended that contractors be encouraged to propose alternatives and to exercise initiative and creativity to provide an improved final product. Such alternatives will be evaluated by the DoD project manager, in terms of the benefits offered, in context with the overall objectives of the project/program.

---

[1] See footnote 1 to § 196.3(a).

[2] See footnote 2 to § 196.3(b)(3).

The changes adopted at the end of Contract Definition shall be reflected in the Project Summary WBS, and the appropriate elements of the approved WBS will be included in the negotiated work statement for follow-on development effort.

(2) *Contract WBS.* Only one WBS shall be used in each request for proposal and ensuing contract. After necessary adjustment based on contractor proposals and contract negotiations, the elements selected become the basis for further extension during the contracted effort.

(i) The development contractor (or equivalent in-house activity) will extend the WBS elements negotiated into the contract to evolve the Contract WBS to the levels necessary to meet his project needs and the requirements of § 196.5(c) through (j). The contractor has complete flexibility in extending the WBS to reflect how his work is to be accomplished.

(ii) The contract shall indicate the levels of the Contract WBS at which cost accumulations shall be made for reporting to the Government. Traceability of cost accumulations will be required to only those lower WBS levels which are used by the contractor for his cost control purposes.

(iii) Changes proposed by the contractor to the first three levels of the Contract WBS shall be specifically approved by the DoD project manager. Information on WBS content, including changes, below the first three levels used by the contractor shall be available to the DoD project manager upon his request.

(3) The Project WBS will be prepared by the DoD Component by compiling the elements of the extended Contract WBS(s) with the Project Summary WBS. The Project WBS will be completed prior to the initiation of production.

(c) *Procurement.* In contracts using WBS's, the following shall be relatable to elements of the Project Summary WBS:

(1) The structure of work statements.

(2) The Contract WBS(s).

(3) The contract line items and end items.

(4) Technical and management reports.

(5) Government Furnished Equipment (GFE).

(d) *System project management.* The System/Project Master Plan required by DoD Directive 5010.14, "System/Project Management," May 4, 1965, shall include the Project Summary WBS. Progress reporting in the areas of technical performance, schedule, and cost shall be based on the Project WBS, and be consistent with DoD Instruction 7000.2, "Performance Measurement for Selected Acquisitions," December 22, 1967.[1]

(e) *Management control systems criteria.* The Contract WBS shall be used as the framework in the implementation of DoD Instruction 7000.2.

(f) *Configuration management.* Items that are designated in a contract as configuration items, Part 195 of this subchapter, shall be identified as WBS elements in the Project and Contract WBS's. However, all WBS elements will not necessarily be subject to configuration management.

(g) *Cost information reports (CIR).* CIR reporting shall be in accordance with the provisions of Part 250 of the subchapter and the CIR Data Plan approved for the particular project.

(h) *Integrated logistic support.* The elements of integrated logistic support, as specified in DoD Directive 4100.35, "Development of Integrated Logistic Support for Systems and Equipment," June 19, 1964,[1] shall be accommodated as indicated in the Summary levels of WBS in § 196.9. Aggregations of WBS elements, for logistics management and reporting, shall be relatable to elements of the Project Summary WBS.

(i) *Programing and budgeting.* Where a Project Summary WBS has been established, it shall be used in any necessary subdividing of a Program Element for purposes of programing and budgeting.

(j) *Reporting relationship.* The organization of reporting requirements shall not be construed by either the DoD Component or the contractor as determining the manner in which the defense materiel item is to be designed or built; this determination is reflected in the WBS approved for the project.

---

[1] See footnote 1 to § 196.3(a).

§ 196.6 Approval.

The DoD Component will prepare a preliminary Project Summary WBS in accordance with the provisions of § 196.5, and will submit this proposed WBS as part of the Technical Development Plan for the particular defense materiel item. The Director of Defense Research and Engineering, in coordination with the appropriate Assistant Secretaries of Defense, will evaluate the Project Summary WBS as part of the project approval.

§ 196.7 Waivers to this part.

If a DoD Component considers it to be in the best interests of the Government to waive application of any portion of this part to a specific project, the reasons for the waiver shall be submitted to the Director of Defense Research and Engineering. The Director of Defense Research and Engineering shall have authority to grant waivers for all provisions of this part, in coordination with the appropriate Assistant Secretaries of Defense.

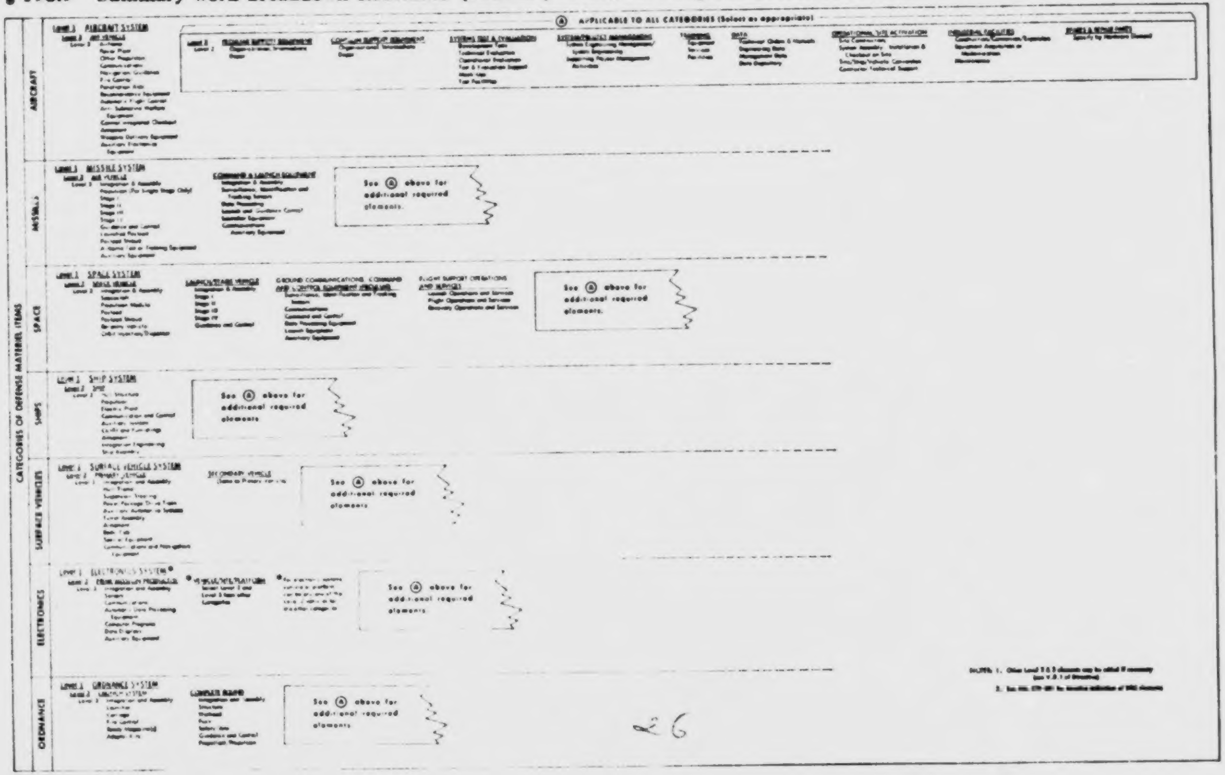
§ 196.8 Detailed guidance.

The Director of Defense Research and Engineering, in coordination with the appropriate Assistant Secretaries of Defense, shall provide more detailed guidance on the preparation of WBS's in the form of a Military Standard, MIL-STD-881 [2] which shall be used in new programs employing WBS as soon as it is issued. This Standard will include a Summary WBS and definitions for each of the categories listed in § 196.9.

---

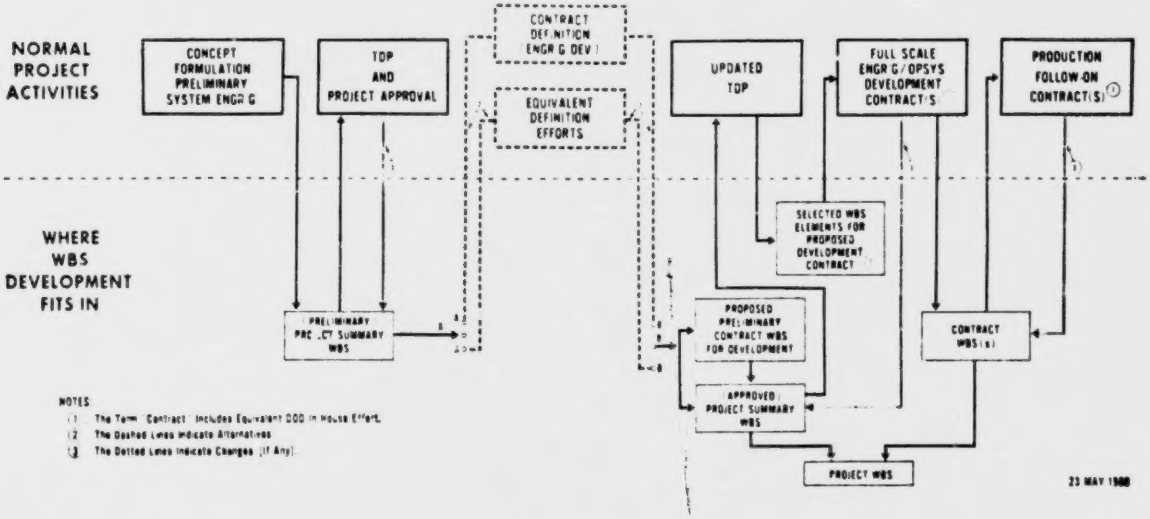
[2] See footnote 2 to § 196.3(b)(3).

§ 196.9 Summary work breakdown structures (summary WBS) for categories of Defense Materiel Items.


CATEGORIES OF DEFENSE MATERIEL ITEMS
Ⓐ APPLICABLE TO ALL CATEGORIES (Select as appropriate)
AIRCRAFT
Level 1 AIRCRAFT SYSTEM
MISSILES
Level 1 MISSILE SYSTEM
COMMAND & LAUNCH EQUIPMENT
SPACE
Level 1 SPACE SYSTEM
LAUNCH/STAGE VEHICLE
FLIGHT SUPPORT OPERATIONS AND SERVICES
SHIPS
Level 1 SHIP SYSTEM
SURFACE VEHICLES
Level 1 SURFACE VEHICLE SYSTEM
SECONDARY VEHICLE
ELECTRONICS
Level 1 ELECTRONICS SYSTEM
ORDNANCE
Level 1 ORDNANCE SYSTEM
See Ⓐ above for additional required elements.

26

§ 196.10 Development and relationships of WBS(s) during acquisition.


NORMAL PROJECT ACTIVITIES
CONCEPT FORMULATION PRELIMINARY SYSTEM ENGR'G
TDP AND PROJECT APPROVAL
CONTRACT DEFINITION (ENGR'G DEV.)
EQUIVALENT DEFINITION EFFORTS
UPDATED TDP
FULL SCALE ENGR'G/OPSYS DEVELOPMENT CONTRACT(S)
PRODUCTION FOLLOW-ON CONTRACT(S) ①
WHERE WBS DEVELOPMENT FITS IN
PRELIMINARY PROJECT SUMMARY WBS
SELECTED WBS ELEMENTS FOR PROPOSED DEVELOPMENT CONTRACT
PROPOSED PRELIMINARY CONTRACT WBS FOR DEVELOPMENT
(APPROVED) PROJECT SUMMARY WBS
CONTRACT WBS(s)
PROJECT WBS

NOTES:
(1) The Term "Contract" Includes Equivalent DOD in House Effort.
(2) The Dashed Lines Indicate Alternatives.
(3) The Dotted Lines Indicate Changes (If Any).

23 MAY 1980

27

PART 197—ENVIRONMENTAL EFFECTS ABROAD OF MAJOR DEPARTMENT OF DEFENSE ACTIONS

Sec.
197.1 Purpose.
197.2 Applicability.
197.3 Definitions.
197.4 Policy.
197.5 Responsibilities.
197.6 Information requirements.

ENCLOSURE 1—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS
ENCLOSURE 2—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

AUTHORITY: Title 10, U.S.C., and Executive Order 12114.

SOURCE: 44 FR 21786, Apr. 14, 1979, unless otherwise noted.

§ 197.1 Purpose.

Executive Order 12114 provides the exclusive and complete requirement for taking account of considerations with respect to actions that do significant harm to the environment of places *outside* the United States. This Part provides policy and procedures to enable Department of Defense (DoD) officials to be informed and take account of environmental considerations when authorizing or approving certain major federal actions that do significant harm to the environment of places outside the United States. Its sole objective is to establish internal procedures to achieve this purpose, and nothing in it shall be construed to create a cause of action. Guidance for taking account of considerations with respect to the environment of places *within* the United States is set out in 32 CFR Part 214 (under rev.) That guidance is grounded on legal and policy requirements different from those applicable to this part.

§ 197.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD components").

§ 197.3 Definitions.

(a) *Environment* means the natural and physical environment, and it excludes social, economic, and other environments. Social and economic effects do not give rise to any requirements under this part.

(b) *Federal Action* means an action that is implemented or funded directly by the United States Government. It does not include actions in which the United States participates in an advisory, information-gathering, representational, or diplomatic capacity but does not implement or fund the action; actions taken by a foreign government or in a foreign country in which the United States is a beneficiary of the action, but does not implement or fund the action; or actions in which foreign governments use funds derived indirectly from United States funding.

(c) *Foreign Nation* means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government, and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes governments regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

(d) *Global Commons* are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

(e) *Major Action* means an action of considerable importance involving substantial expenditures of time, money, and resources, that affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area, and that is substantially different or a significant departure from other actions, previously analyzed with respect to environmental considerations and approved, with which the action under consideration may be associated. Deployment of ships, aircraft, or other mobile military equipment is not a major action for purposes of this part.

(f) *United States* means all States, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

§ 197.4 Policy.

(a) Executive Order 12114 is based on the authority vested in the President by the Constitution and the laws of the United States. The objective of the Order is to further foreign policy and national security interests while at the same time taking into consideration important environmental concerns.

(b) The Department of Defense acts with care in the global commons because the stewardship of these areas is shared by all the nations of the world. The Department of Defense will take account of environmental considerations when it acts in the global commons in accordance with procedures set out in Enclosure 1 and its attachment.

(c) The Department of Defense also acts with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. The Department of Defense will take account of environmental considerations in accordance with Enclosure 2 and its attachments when it acts in a foreign nation.

(d) Foreign policy considerations require coordination with the Department of State on communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this part. Informal working-level communications and arrangements are not included in this coordination requirement. Consultation with the Department of State also is required in connection with the utilization of additional exemptions from this part as specified in paragraph C.3.b. of Enclosure 2. Coordination and consultation with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

(e) Executive Order 12114, implemented by this Part prescribes the exclusive and complete procedural measures and other actions to be taken by the Department of Defense to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States.

§ 197.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall:

(1) Serve as the responsible Department of Defense official for policy matters under Executive Order 12114 and this part;

(2) Modify or supplement any of the enclosures to this part in a manner consistent with the policies set forth in this part;

(3) Maintain liaison with the Council on Environmental Quality with respect to environmental documents;

(4) Participate in determining whether a recommendation should be made to the President that a natural or ecological resource of global importance be designated for protection; and

(5) Consult with the Assistant Secretary of Defense (International Security Affairs) on significant or sensitive actions or decisions affecting relations with another nation.

(b) The *Assistant Secretary of Defense (International Security Affairs)* shall:

(1) Maintain liaison and conduct consultations with the Department of State as required under this part; and

(2) Serve as the responsible official, in consultation with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), for monitoring

BEST COPY AVAILABLE

the continuing cooperation and the exchange of information with other nations concerning the environment.

(c) The *General Counsel, DoD,* shall provide advice and assistance concerning the requirements of Executive Order 12114 and this part.

(d) The *Secretaries of the Military Departments, Directors of the Defense Agencies,* and *Commanders of the Unified and Specified Commands,* for operations under their jurisdiction, shall:

(1) Prepare and consider environmental documents when required by this directive for proposed actions within their respective DoD component (this reporting requirement has been assigned Report Control Symbol DD-M(AR) 1327 (§ 197.6));

(2) Insure that regulations and other major policy issuances are reviewed for consistency with Executive Order 12114 and this part;

(3) Designate a single point-of-contact for matters pertaining to this part; and

(4) Consult with the Assistant Secretary of Defense (International Security Affairs) on significant or sensitive actions or decisions affecting relations with another nation.

§ 197.6 Information requirements.

The documents to be prepared under § 197.5(d) and Enclosures 1 and 2, "Requirements for Environmental Considerations—Global Commons," and "Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources," respectively, are assigned Report Control Symbol DD-M(AR) 1327.

ENCLOSURE 1—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS

A. *General.* This enclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do significant harm to the environment of the global commons. The focus is not the place of the action but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

B. *Actions included.* The requirements of this enclosure apply only to major federal actions that do significant harm to the environment of the global commons.

C. *Environmental Document Requirements*—1. *General.* When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decision-making official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

2. *Limitations on Actions.* Until the requirements of this enclosure have been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

3. *Emergencies.* Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this enclosure, the DoD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

4. *Combining Documents.* Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what federal agency prepared it, no new statement is required by this part.

5. *Collective Statements.* Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

6. *Tiering.* Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

7. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or pro-

gram, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

8. *Categorical Exclusions.* The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in Attachment 1 to this enclosure, to be entitled, "Categorical Exclusions—Global commons. "DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendations for cateorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

9. *Environmental Assessments.* The purpose of an environmental assessment is to assist DoD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

D. *Environmental Impact Statements.* 1. *General.* Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in Enclosure 2. of this part.

2. *Draft Statement.* Environmental impact statements will be prepared in two stages and may be supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the council on environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in § 197.4(d) and subsection D.11. of this enclosure.

3. *Final statement.* Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

4. *Supplemental statement.* Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects on the global commons. Supplemental statements will be circulated for comment as in subsection 2. of this enclosure unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

5. *Statement content.* The statement will include: A section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

6. *Incomplete Information.* The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

7. *Hearings.* Public hearings are not required. consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: Foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained

through hearings; time considerations; and requirements for commercial confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

8. *Decision.* Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decision-maker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decision-making process. Other means of making an appropriate record are also acceptable.

9. *Timing.* No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the FEDERAL REGISTER, or 30 days after the final statement has been made available and notice thereof published in the FEDERAL REGISTER. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security or foreign policy, reduce the 30-day, 45-day, and 90-day periods.

10. *Classified Information.* Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (32 CFR 159) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this part. Only unclassified portions of environmental documents may be disseminated to the public.

11. *Foreign Governments.* Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this part will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

ENCLOSURE 2—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

A. *General.* This enclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of a foreign nation or to a protected global resource.

B. *Actions included.* 1. The requirements of this enclosure apply only to the following actions:

a. Major federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

b. Major federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation: (1) A product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. Included in the category of "prohibited or strictly regulated" are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

c. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such determinations by the President or the Secretary of State to be listed in Attachment 1 to this enclosure, entitled, "Protected Global Resources".

2. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection B.1., of

this enclosure. No action is required under this enclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

C. *Environmental Document Requirements.*

1. *General.* a. There are two types of environmental documents officials shall use in taking account of environmental considerations for actions covered by this enclosure:

(1) Environmental studies—bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

(2) Environmental reviews—concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

b. This section identifies the procedures for the preparation of environmental studies or reviews when required by this enclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what federal agency prepared it, no new document is required by this enclosure.

2. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

3. *Exemptions.* There are general exemptions from the requirements of this enclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

a. *General Exemptions.* The following actions are exempt from the procedural and other requirements of this enclosure under general exemptions established for all agencies by Executive Order 12114:

(1) Actions that the DoD component concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

(2) Actions taken by the President. These include: Signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidental decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

(3) Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

(4) Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036, 43 FR 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

(6) The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.

(7) Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

(8) Disaster and emergency relief actions.

(9) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: Advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976); advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. 2401-2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

(10) Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

b. *Additional Exemptions.* The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: Case-by-case and class.

(1) *Case-by-Case Exemptions.* Exemptions other than those specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this enclosure. The following procedures apply for approving these exemptions:

(a) *Emergencies.* This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DoD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of State and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DoD component head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultations.

(b) *Other Circumstances.* National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph C.3.a. of this enclosure, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DoD component concerned is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

(2) *Class Exemptions.* Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DoD component concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DoD components. Notice of the establishment of a class exemption will be issued as Attachment 2 to this enclosure to be entitled, "Class Exemptions—Foreign Nations and Protected Global Resources."

4. *Categorical Exclusions.* The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in Attachment 3 to this enclosure to be entitled, "Categorical Exclusions—Foreign Nations and Protected Global Resources."

DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

D. *Environmental studies.* 1. *General.* Environmental studies are one of two alternative types of documents to be used for actions described by section B. of this enclosure.

a. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DoD components in the decision-making process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions by the other participating nations, bodies, or organizations.

b. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (B.1.b.) and actions that affect a protected global resource (B.1.c.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Study.* The judgment whether the action is one that would do significant harm to one of the environments covered by this enclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decision-makers who participated. If a decision is made to prepare a study then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

4. *Content of the Study.* The document is a study of the environmental aspects of the proposed action to be considered in the decision-making process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection D.6., of this enclosure). The study should, however, include consideration of the following:

a. A general review of the affected environment;

b. The predicted effect of the action on the environment;

c. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and

d. If no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

5. *Distribution of the Study.* Except as provided under "Limitations," (subsection D.6., of this enclosure), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection D.6., of this enclosure) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information and other national security interests;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DoD's role and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (32 CFR 159) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

E. *Environmental Reviews.* 1. *General.* Environmental reviews are the second of the two alternative types of documents to be used for actions covered by section B. of this enclosure.

a. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the environmental aspects by the United States and by any foreign government involved in taking the action.

b. An environmental review is prepared by the DoD component concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section B., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (B.1.a.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this enclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Review.* Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this enclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

4. *Content of the Review.* An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DoD component concerned in the decision-making process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under Enclosure 1 of this part. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors affecting the content are identified under "Limitations," (subsection E.6., of this enclosure). To the extent reasonably practical the review should include consideration of the following:

a. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-guage descriptive factors;

b. Identification of the important environmental issues involved;

c. The aspects of the actions taken or to be taken by the DoD component that ameliorate or minimize the impact on the environment; and

d. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

5. *Distribution.* Except as provided under "Limitations," (subsection E.6., of this enclosure), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E.6., of this enclosure) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change substantially the normal content of the environmental review;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirements to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DoD procedures (32 CFR 159) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this part.

PART 198—[RESERVED]

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

Sec.

199.1 General provisions.
199.2 Definitions.
199.3 Eligibility.
199.4 Basic program benefits.
199.5 Program for the handicapped (PFTH).
199.6 Authorized providers.
199.7 Claims submission, review, and payment.
199.8 Double coverage.
199.9 [Reserved]
199.10 Appeal and hearing procedures.
199.11 Overpayments recovery.
199.12 Third party recoveries.

Appendix A—Acronyms

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

Source: 51 FR 24008, July 1, 1986, unless otherwise noted.

§ 199.1 General provisions.

(a) *Purpose.* This part prescribes guidelines and policies for the administration of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS) and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(b) *Applicability*—(1) *Geographic.* This part is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States possessions and territories, and in all foreign countries, unless specific exemptions are granted in writing by the Director, OCHAMPUS, or a designee.

(2) *Agency.* The provisions of this part apply throughout the Department of Defense (DoD), the Coast Guard, the Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

(c) *Authority and responsibility*—(1) *Legislative authority*—(i) *Joint regulations.* 10 U.S.C. Chapter 55 authorizes the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation jointly to prescribe regulations for the administration of CHAMPUS.

(ii) *Administration.* 10 U.S.C. Chapter 55 also authorizes the Secretary of Defense to administer CHAMPUS for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer CHAMPUS for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer CHAMPUS for the Commissioned Corps of the NOAA and the USPHS.

(2) *Organizational delegations and assignments*—(i) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR Part 367, delegated authority to the ASD(HA) to provide policy guidance, management control and coordination as required for CHAMPUS, and to develop, issue, and maintain regulations with the coordination of the Military Departments and consistent with DoD 5025.1-M.[1] Additional implementing authority is contained in DoD Directive 5105.46.[2]

(ii) *Department of Health and Human Services.* The Secretary of Health and Human Services has delegated authority to the Assistant Secretary for Health, DHHS, to consult with the Secretary of Defense or a designee and to approve and issue joint regulations implementing 10 U.S.C. Chapter 55. This delegation was effective April 19, 1976 (41 FR 18698, May 6, 1976).

(iii) *Department of Transportation.* The Secretary of Transportation has delegated authority to the Commandant, United States Coast Guard, to consult with the Secretary of Defense or a designee and to approve an issue joint regulations implementing 10 U.S.C., Chapter 55.

(iv) *Office of CHAMPUS (OCHAMPUS).* By DoD Directive 5105.46, OCHAMPUS was established as an OSD field activity under the policy guidance and direction of the ASD(HA). The Director, OCHAMPUS, is directed to execute the following responsibilities and functions:

(A) Supervise and administer the programs and missions to:

(*1*) Provide technical direction and guidance on organizational, administrative, and operational matters.

(*2*) Conduct studies and research activities in the health care area to assist in formulating policy required to guide OCHAMPUS in carrying out its programs.

(*3*) Enter into agreements through the Department of Defense with respect to the Military Departments or other U.S. Government entities, as required, for the effective performance of CHAMPUS.

(*4*) Supervise and administer OCHAMPUS financial management activities to include:

(*i*) Formulating budget estimates and justifications to be submitted to the Deputy Assistant Secretary of Defense (Administration) (DASD(A)) for inclusion in the overall budget for the Office of the Secretary of Defense.

---

[1] Copies may be obtained, if needed, from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained; if needed from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

(*ii*) Ensuring the establishment and maintenance of necessary accounting records and submission of required financial reports to the DASD(A).

(*iii*) Ensuring the effective execution of approved budgets.

(*5*) Contract for claims processing services, studies and research, supplies, equipment, an other services necessary to carry out the CHAMPUS programs.

(*6*) Monitor claims adjudication and processing contracts to ensure that CHAMPUS fiscal intermediaries are fulfilling their obligations.

(*7*) Convey appropriate CHAMPUS information to providers of care, practitioners, professional societies, health industry organizations, fiscal agents, hospital contractors, and others who have need of such information.

(*8*) Collect, maintain, and analyze program cost and utilization data appropriate for preparation of budgets, fiscal planning, and as otherwise needed to carry out CHAMPUS programs and missions.

(*9*) Arrange for the facilities logistical and administrative support to be provided by the Military Departments.

(*10*) Execute such other functions as appropriate to administer the programs and missions assigned.

(B) Direct and control of the office, activities, and functions of OCHAMPUS Europe (OCHAMPUSEUR).

NOTE—The Director, OCHAMPUS, may also establish similar offices for OCHAMPUS Southern Hemisphere (OCHAMPUSSO) and OCHAMPUS Pacific (OCHAMPUSPAC).

(C) Develop for issuance, subject to approval by the ASD(HA), such policies or regulations as required to administer and manage CHAMPUS effectively.

(v) *Evidence of eligibility.* The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under CHAMPUS. Identification cards or devices bearing information necessary for preliminary evidence of eligibility, subject to verification through the DEERS, shall be issued to eligible persons by the appropriate Uniformed Services (DoD 1341.1-M, "Defense Enrollment Eligibility Reporting System (DEERS) Program Manual").

(d) *Medical benefits program.* The CHAMPUS is a program of medical benefits provided by the U.S. Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services. Although similar in structure in many of its aspects, CHAMPUS is not an insurance program in that it does not involve a contract guaranteeing the indemnification of an insured party against a specified loss in return for a premium paid. Further, CHAMPUS is not subject to those state regulatory bodies or agencies that control the insurance business generally.

(e) *Program funds.* The funds used by CHAMPUS are appropriated funds furnished by the Congress through the annual appropriation acts for the Department of Defense and the DHHS. These funds are further disbursed by agents of the government under contracts negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Aquisition Regulation (FAR). These agents (referred to in this part as CHAMPUS fiscal intermediaries) receive claims against CHAMPUS and adjudicate the claims under this part and in accordance with administrative procedures and instructions prescribed in their contracts. The funds expended for CHAMPUS benefits are federal funds provided CHAMPUS fiscal intermediaries solely to pay CHAMPUS claims, and are not a part of or obtained from the CHAMPUS fiscal intermediary's funds related to other programs or insurance coverage. CHAMPUS fiscal intermediaries are reimbursed for the adjudication and payment of CHAMPUS claims at a rate (generally fixed-price) prescribed in their contracts.

(f) *Claims adjudication and processing.* The Director, OCHAMPUS, is responsible for making such arrangements as are necessary to adjudicate and process CHAMPUS claims worldwide.

(1) *The United States*—(i) *Contracting out.* The primary method of processing CHAMPUS claims in the United States is through competitively procured, fixed-price contracts. The Director, OCHAMPUS, or a designee, is responsible for negotiating, under the provisions of the FAR, contracts for the purpose of adjudicating and processing CHAMPUS claims (and related supporting activities).

(ii) *In-house.* The Director, OCHAMPUS, or a designee, is authorized to adjudicate and process certain CHAMPUS claims in-house at OCHAMPUS, when it is determined to be in the best interests of CHAMPUS subject to applicable considerations set forth in OMB Circular A-76. Such in-house claims processing may involve special or unique claims, or all claims for a specific geographic area.

(2) *Outside the United States*—(i) *Special subsidiary office or contracting out.* For adjudicating and processing CHAMPUS claims for services or supplies provided outside the United States, the Director, OCHAMPUS, or a designee, has the option of either setting up a special subsidiary claims paying operation (such as OCHAMPUSEUR) or contracting out as described in paragraph (f)(1)(i) of this section. Such claims paying operations are reviewed periodically to determine whether current arrangements continue to be appropriate and the most effective.

(ii) *Support agreements.* In those situations outside the United States that demand special arrangements, the Director, OCHAMPUS, may enter into support agreements through the Department of Defense with any of the Military Departments or other government agency to process CHAMPUS claims in specific geographic locations. Such agreements may be negotiated for such period of time as the Director, OCHAMPUS, or designee, may determine to be necessary to meet identified special demands.

(g) *Recommendations for change to part.* The Director, OCHAMPUS, or a designee, shall establish procedures for receiving and processing recommendations for changes to this part from interested parties.

(h) *CHAMPUS, claims forms.* The Director, OCHAMPUS, or a designee, is responsible for the development and updating of all CHAMPUS claim forms and any other forms necessary in the administration of CHAMPUS.

(i) *The CHAMPUS handbook.* The Director, OCHAMPUS, or a designee, shall develop the CHAMPUS, Handbook. The CHAMPUS Handbook is a general program guide for the use of CHAMPUS beneficiaries and providers and shall be updated, as required.

(j) *Program integrity.* The Director, OCHAMPUS, or a designee, shall oversee all CHAMPUS personnel, fiscal intermediaries, providers, and beneficiaries to ensure compliance with this part. The Director, OCHAMPUS, or a designee, shall accomplish this by means of proper delegation of authority, separation of responsibilities, establishment of reports, performance evaluations, internal and external management and fiscal audits, personal or delegated reviews of CHAMPUS responsibilities, taking affidavits, exchange of information among state and Federal governmental agencies, insurers, providers and associations of providers, and such other means as may be appropriate. Compliance with law and this part shall include compliance with specific contracts and agreements, regardless of form, and general instructions, such as CHAMPUS policies, instructions, procedures, and criteria relating to CHAMPUS operation.

(k) *Role of CHAMPUS Health Benefits Advisor (HBA).* The CHAMPUS HBA is appointed (generally by the commander of a Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving CHAMPUS. The CHAMPUS HBA may assist beneficiaries or sponsors in applying for CHAMPUS benefits, in the preparation of claims, and in their relations with OCHAMPUS and CHAMPUS fiscal intermediaries. However, the CHAMPUS HBA is not responsible for CHAMPUS policies and procedures and has no authority to make benefit determinations or obligate Government funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on

OCHAMPUS or CHAMPUS fiscal intermediaries.

(l) *Cooperation and exchange of information with other Federal programs.* The Director, OCHAMPUS, or a designee, shall disclose to appropriate officers or employees of the DHHS:

(1) *Investigation for fraud.* The name and address of any physician or other individual actively being investigated for possible fraud in connection with CHAMPUS, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) *Unnecessary services.* The name and address of any provider of medical services, organization, or other person found, after consultation with an appropriate professional association or appropriate peer review body, to have provided unnecessary services. Such information will be released only for the purpose of conducting an investigation or prosecution, or for the administration of titles XVIII and XIX of the Social Security Act, provided that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes.

(m) *Disclosure of information to the public.* Records and information acquired in the administration of CHAMPUS are records of the Department of Defense and may be disclosed in accordance with DoD Directive 5400.7[3], DoD 5400.7-R[4], and DoD 5400.11-R[5] (codified in 32 CFR Parts 286 and 286a), constituting the applicable DoD Directives and DoD Regulations implementing the Freedom of Information and the Privacy Acts.

(n) *Discretionary authority.* When it is determined to be in the best interest of CHAMPUS, the Director, OCHAMPUS, or a designee, is granted discretionary authority to waive any requirements of this part, except that any requirement specifically set forth in 10 U.S.C. Chapter 55, or otherwise imposed by law, may not be waived. It is the intent that such discretionay authority be used only under very unusual and limited circumstances and not to deny any individual any right, benefit, or privilege provided to him or her by statute or this part. Any such exception granted by the Director, OCHAMPUS, or a designee, shall apply only to the individual circumstance or case involved and will in no way be construed to be precedent-setting.

(o) *Equality of benefits.* All claims submitted for benefits under CHAMPUS shall be adjudicated in a consistent, fair, and equitable manner, without regard to the rank of the sponsor.

§ 199.2 Definitions.

(a) *General.* In an effort to be as specific as possible as to the word and intent of CHAMPUS, the following definitions have been developed. While many of the definitions are general and some assign meaning to relatively common terms within the health insurance environment, others are applicable only to CHAMPUS; however, they all appear in this part solely for the purpose of the Program. Except when otherwise specified, the definitions in this section apply generally throughout this part.

(b) *Specific definitions.*

Absent treatment. Services performed by Chrisitan Science practitioners for a person when the person is physically present.

NOTE: Technically, "Absent Treatment" is an obsolete term. The current Christian Science terminology is "treatment through prayer and spiritual means," which is employed by an authorized Christian Science practitioner either with the beneficiary being present or absent. However, to be considered for coverage under CHAMPUS, the beneficiary must be present physically when a Christian Science service is rendered, regardless of the terminology used.

Accidental injury. Physical bodily injury resulting from an external force, blow or fall, or the ingestion of a foreign body or harmful substance, requiring immediate medical treatment. Accidental injury also includes animal and insect bites and sunstrokes. For the purpose of CHAMPUS, the breaking of a tooth or teeth does not constitute a physical bodily injury.

---

[3] See footnote 2 to § 199.1(c)(2)(i)

[4] See footnote 1 to § 199.1(c)(2)(i)

[5] See footnote 1 to § 199.1(c)(2)(i)

Active duty. Full-time duty in the Uniformed Services of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance while in the active Military Service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned.

Active duty member. A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less.

Acupuncture. The practice of inserting needles into various body parts to pierce specific peripheral nerves for the production of counter-irritation to relieve the discomfort of pain, induce surgical anesthesia, or for other treatment purposes.

NOTE: Acupuncture is not covered by CHAMPUS.

Adjunctive dental care. Dental care that is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition. Adjunctive dental care does not include preventive, routine, restorative, or prosthodontic dental care; nor does it include emergency dental care except as it may otherwise qualify as adjunctive.

Admission. The formal acceptance by a hospital or other authorized institutional provider of a CHAMPUS beneficiary for the purpose of occupying a bed with the reasonable expectation that the patient will remain on inpatient status at least 24 hours with the registration and assignment of an inpatient number or designation. Institutional care in connection with in and out (ambulatory) surgery is not included within the meaning of "admission" whether or not an inpatient number or designation is assigned by the facility.

Adopted Child. A child taken into one's own family by legal process and treated as one's own child. In case of adoption, CHAMPUS eligibility begins as of 12:01 a.m. of the day of the final adoption decree.

NOTE.—There is no CHAMPUS benefit entitlement during any interim waiting period.

Allowable charge. The CHAMPUS-determined level of payment to physicians, other individual professional providers and other providers, based on one of the approved reimbursement methods set forth in paragraph (e)(3) of § 199.6 of this part. Allowable charge also may be referred to as the CHAMPUS-determined reasonable charge.

Allowable cost. The CHAMPUS-determined level of payment to hospitals or other institutions, based on one of the approved reimbursement methods set forth in paragraphs (e)(1) and (e)(2) of § 199.6 of this part. Allowable cost may also be referred to as the CHAMPUS-determined reasonable cost.

Ambulance. A specially designed vehicle for transporting the sick or injured that contains a stretcher, linens, first aid supplies, oxygen equipment, and such lifesaving equipment required by state and local law, and that is staffed by personnel trained to provide first aid treatment.

Amount in dispute. The amount of money, determined under this part, that CHAMPUS would pay for medical services and supplies involved in an adverse determination being appealed if the appeal were resolved in favor of the appealing party. See § 199.10 for additional information concerning the determination of "amount in dispute" under this part.

Anesthesia services. The administration of an anesthetic agent by injection or inhalation, the purpose and effect of which is to produce surgical anesthesia characterized by muscular relaxation, loss of sensation, or loss of consciousness when administered by or under the direction of a physician or dentist in connection with otherwise covered surgery or obstetrical care, or shock therapy. Anesthesia services do not include hypnosis or acupuncture.

Appealable issue. Disputed questions of fact which, if resolved in favor of the appealing party, would result in the authorization of CHAMPUS benefits, or approval as an authorized provider in accordance with this part. An appealable issue does not exist if no facts are in dispute, if no CHAMPUS benefits would be payable, or if there is no authorized provider, regardless of the resolution of any disputed facts. See § 199.10 for additional information concerning the determination of "appealable issue" under this part.

Appealing party. Any party to the initial determination who files an appeal of an adverse determination or requests a hearing under the provisions of this part.

Appropriate medical care. (i) Services performed in connection with the diagnosis or treatment of disease or injury, pregnancy, mental disorder, or well-baby care which are in keeping with the generally accepted norms for medical practice in the United States;

(ii) The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and

(iii) The medical environment in which the medical services are performed is at the level adequate to provide the required medical care.

Attending physician. The physician who has the primary responsibility for the medical diagnosis and treatment of the patient. A consultant, an assistant-at-surgery or an anesthesiologist is not an attending physician. Under very extraordinary circumstances, because of the presence of complex, serious, and multiple, but unrelated, medical conditions, a patient may have more than one attending physician concurrently rendering medical treatment during a single period of time.

Authorized provider. A hospital or institutional provider, physician, or other individual professional provider, or other provider of services or supplies specifically authorized to provide benefits under CHAMPUS in § 199.6 of this part.

Basic program. The primary medical benefits authorized under Chapter 55 of title 10 U.S. Code, and set forth in § 199.4 of this part.

Beneficiary. An individual who has been determined to be eligible for CHAMPUS benefits, as set forth in § 199.3 of this part.

Beneficiary liability. The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of medical care or treatment received. Specifically, for the purposes of services and supplies covered by CHAMPUS, beneficiary liability includes any annual deductible amount, cost-sharing amounts, or, when a provider does not submit a claim on a participating basis on behalf of the beneficiary, amounts above the CHAMPUS-determined allowable cost or charge. Beneficiary liability also includes any expenses for medical or related services and supplies not covered by CHAMPUS.

Brace. An orthopedic appliance or apparatus (an orthosis) used to support, align, or hold parts of the body in correct position. For the purposes of CHAMPUS, it does not include orthodontic or other dental appliances.

Certified nurse midwife. A registered nurse who:

(i) Has pursued his or her education on a post-R.N. or master's degree level into the area of management of care of mothers and babies throughout the maternity cycle; and

(ii) Is certified by the American College of Nurse Midwives.

Certified psychiatric nurse specialist. A licensed, registered nurse who meets the criteria in § 199.6(c)(3)(iii)(G).

CHAMPUS fiscal intermediary. An organization with which the Director, OCHAMPUS, has entered into a contract for the adjudication and processing of CHAMPUS claims and the performance of related support activities.

CHAMPUS Health Benefits Advisors (HBAs). Those individuals located at Uniformed Services medical facilities (on occasion at other locations) and assigned the responsibility for providing CHAMPUS information, information concerning availability of care from the Uniformed Services direct medical care system, and generally assisting beneficiaries (or sponsors). The term also includes "Health Benefits Counselor" and "CHAMPUS Advisor."

Chemotherapy. The administration of approved antineoplastic drugs for the treatment of malignancies (cancer) via perfusion, infusion, or parenteral methods of administration.

Child. An unmarried legitimate child, adopted child, stepchild, or illegitimate child, who otherwise meets the requirements (including age requirements) set forth in § 199.3(b)(2)(iv) of this part.

Chiropractor. A practitioner of chiropractic (also called chiropraxis); essentially a system of therapeutics based upon the claim that disease is caused by abnormal function of the nerve system. It attempts to restore normal function of the nerve system by manipulation and treatment of the structures of the human body, especially those of the spinal column.

NOTE: Services of chiropractors are not covered by CHAMPUS.

Christian science nurse. An individual who has been accredited as a Christian Science Nurse by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, and listed (or eligible to be listed) in the *Christian Science Journal* at the time the service is provided. The duties of Christian Science nurses are spiritual and are nonmedical and nontechnical nursing care performed under the direction of an accredited Christian Science practitioner. There exist two levels of Christian Science nurse accreditation:

(i) *Graduate Christian Science nurse.* This accreditation is granted by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, after completion of a 3-year course of instruction and study.

(ii) *Practical Christian Science nurse.* This accreditation is granted by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, after completion of a 1-year course of instruction and study.

Christian Science practitioner. An individual who has been accredited as a Christian Science Practitioner for the First Church, Scientist, Boston, Massachusetts, and listed (or eligible to be listed) in the *Christian Science Journal* at the time the service is provided. An individual who attains this accreditation has demonstrated results of his or her healing through faith and prayer rather than by medical treatment. Instruction is executed by an accredited Christian Science teacher and is continuous.

Christian Science sanatorium. A sanatorium either operated by the First Church of Christ, Scientist, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

Chronic medical condition. A medical condition that is not curable, but which is under control through active medical treatment. Such chronic conditions may have periodic acute episodes and may require intermittent inpatient hospital care. However, a chronic medical condition can be controlled sufficiently to permit generally continuation of some activities of persons who are not ill (such as work and school).

Chronic renal disease (CRD). The end stage of renal disease which requires a continuing course of dialysis or a kidney transplantation to ameliorate uremic symptoms and maintain life.

Clinical psychologist. A psychologist, certified or licensed at the independent practice level in his or her state, who meets the criteria in § 199.6(c)(3)(iii)(A).

Clinical social worker. An individual who is licensed or certified as a clinical social worker and meets the criteria listed in § 199.6.

Collateral visits. Sessions with the patient's family or significant others for purposes of information gathering or implementing treatment goals.

Combined daily charge. A billing procedure by an inpatient facility that uses an inclusive flat rate covering all professional and ancillary charges without any itemization.

Complications of pregnancy. One of the following, when commencing or exacerbating during the term of the pregnancy:

(i) Caesarean delivery; hysterotomy.

(ii) Pregnancy terminating before expiration of 26 weeks, except a voluntary abortion.

(iii) False labor or threatened miscarriage.

BEST COPY AVAILABLE

(iv) Nephritis or pyelitis of pregnancy.

(v) Hyperemesis gravidarum.

(vi) Toxemia.

(vii) Aggravation of a heart condition or diabetes.

(viii) Premature rupture of membrane.

(ix) Ectopic pregnancy.

(x) Hemorrhage.

(xi) Other conditions as may be determined by the Director, OCHAMPUS, or a designee.

Confinement. That period of time from the day of admission to a hospital or other institutional provider, to the day of discharge, transfer, or separation from the facility, or death. Successive admissions also may qualify as one confinement provided not more than 60 days have elapsed between the successive admissions, except that successive admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions.

Congenital anomaly. A condition existing at or from birth that is a significant deviation from the common form or norm and is other than a common racial or ethnic feature. For purposes of CHAMPUS, congenital anomalies do not include anomalies relating to teeth (including malocclusion or missing tooth buds) or structures supporting the teeth, or to any form of hermaphroditism or sex gender confusion. Examples of congenital anomalies are harelip, birthmarks, webbed fingers or toes, or such other conditions that the Director, OCHAMPUS, or a designee, may determine to be congenital anomalies.

NOTE: Also refer to §199.4(e)(7) of this part.

Consultation. A deliberation with a specialist physician or dentist requested by the attending physician primarily responsible for the medical care of the patient, with respect to the diagnosis or treatment in any particular case. A consulting physician or dentist may perform a limited examination of a given system or one requiring a complete diagnostic history and examination. To qualify as a consultation, a written report to the attending physician of the findings of the consultant is required.

NOTE: Staff consultations required by rules and regulations of the medical staff of a hospital or other institutional provider do not qualify as consultation.

Consulting physician or dentist. A physician or dentist, other than the attending physician, who performs a consultation.

Coordination of benefits. The coordination, on a primary or secondary payer basis, of the payment of benefits between two or more health care coverages to avoid duplication of benefit payments.

Cosmetic, reconstructive, or plastic surgery. Surgery that can be expected primarily to improve the physical appearance of a beneficiary, or that is performed primarily for psychological purposes, or that restores form, but does not correct or improve materially a bodily function.

Cost-share. The amount of money for which the beneficiary (or sponsor) is responsible in connection with otherwise covered inpatient and outpatient services (other than the annual fiscal year deductible or disallowed amounts) as set forth in §§199.4(f) and 199.5(b) of this part. Cost-sharing may also be referred to as "co-payment."

Custodial care. Care rendered to a patient—

(i) who is disabled mentally or physically and such disability is expected to continue and be prolonged, and

(ii) who requires a protected, monitored, or controlled environment whether in an institution or in the home, and

(iii) who requires assistance to support the essentials of daily living, and

(iv) who is not under active and specific medical, surgical, or psychiatric treatment that will reduce the disability to the extent necessary to enable the patient to function outside the protected, monitored, or controlled environment.

A custodial care determination is not precluded by the fact that a patient is under the care of a supervising or attending physician and that services are being ordered and prescribed to support and generally maintain the patient's condition, or provide for the patient's comfort, or ensure the manageability of the patient. Further, a custodial care determination is not precluded because the ordered and prescribed services and supplies are being provided by an R.N., L.P.N., or L.V.N.

NOTE: The determination of custodial care in no way implies that the care being rendered is not required by the patient; it only means that it is the kind of care that is not covered under the Basic Program.

Day or night care. A program of services for the diagnosis, care, and treatment of persons with psychiatric disorders that provides a planned medical therapeutic program for patients who do not require full-time hospitalization but who need broader programs than are possible through outpatient visits. Patients may participate in such programs on a day or night basis but not both programs (to do so would constitute inpatient psychiatric hospitalization). Such programs must vest patient care under the supervision of a professional staff of licensed physicians. Such programs also must be operated under the auspices, either by contract or direct administration, of a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or a community mental health center.

NOTE: The term "day or night center" is frequently used inappropriately to connote a single free-standing facility. This term is synonymous with the term "partial hospitalization."

Days. Calendar days.

Deceased service member. A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less; or a retiree of a Uniformed Service.

Deductible. Payment by a beneficiary of the first $50 of the CHAMPUS-determined allowable costs or charges for otherwise covered outpatient services or supplies provided in any one fiscal year; or for a family, the aggregate payment by two or more beneficiaries who submit claims of the first $100.

Deductible certificate. A statement issued to the beneficiary (or sponsor) by a CHAMPUS fiscal intermediary certifying to deductible amounts satisfied by a CHAMPUS beneficiary for any applicable fiscal year.

Defense Enrollment Eligibility Reporting System (DEERS). The automated system that is composed of two phases:

(i) Enrolling all active duty and retired service members, their dependents, and the dependents of deceased service members, and

(ii) Verifying their eligibility for health care benefits in the direct care facilities and through CHAMPUS.

Dentist. Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

Dependent. A person who bears any of the following relationships to an active duty member (under a call or order that does not specify a period of 30 days or less), retiree, or deceased active duty member or retiree, of a Uniformed Service, that is, lawful spouse, former spouse (in certain circumstances), unremarried widow or widower, or child; or a spouse and child of an active duty member of the armed forces of foreign North Atlantic Treaty Organization (NATO) nations (refer to § 199.3(b) of this part).

Deserter or desertion status. A service member is a deserter, or in a desertion status, when the Uniformed Service concerned has made an administrative determination to that effect, or the member's period of unauthorized absence has resulted in a court-martial conviction of desertion. Administrative declarations of desertion normally are made when a member has been an unauthorized absentee for over 30 days, but particular circumstances may result in an earlier declaration. Entitlement to CHAMPUS benefits ceases as of 12.01 a.m. on the day following the day the desertion status is declared. Benefits are not to be authorized for treatment received during a period of unauthorized absence that results in a court-martial conviction for desertion. Dependent eligibility for benefits is reestablished when a deserter is returned to military control and continues, even though the member may be in confinement, until any discharge is executed. When a deserter status is later found to have been determined erroneously, the status of deserter is considered never to have existed, and the member's dependents will have been eligible continuously for benefits under CHAMPUS.

Diagnostic admission. An admission to a hospital or other authorized institutional provider, or an extension of a stay in such a facility, primarily for the purpose of performing diagnostic tests, examinations, and procedures.

Doctor of Dental Medicine (D.M.D.). A person who has received a degree in dentistry, that is, that department of the healing arts which is concerned with the teeth, oral cavity, and associated structures.

Doctor of Medicine (M.D.). A person who has graduated from a college of allopathic medicine and who is entitled legally to use the designation M.D.

Doctor of Osteopathy (D.O.). A practitioner of osteopathy, that is, a system of therapy based on the theory that the body is capable of making its own remedies against disease and other toxic conditions when it is in normal structural relationship and has favorable environmental conditions and adequate nutrition. It utilizes generally accepted physical, medicinal, and surgical methods of diagnosis and therapy, while placing chief emphasis on the importance of normal body mechanics and manipulative methods of detecting and correcting faulty structure.

Domiciliary care. Inpatient institutional care provided the beneficiary not because it is medically necessary, but because the care in the home setting is not available, is unsuitable, or members of the patient's family are unwilling to provide the care. Institutionalization because of abandonment constitutes domiciliary care.

NOTE: Domiciliary care is not covered under either the CHAMPUS Basic Program or the Program for the Handicapped (PFTH).

Donor. An individual who supplies living tissue or material to be used in another body, such as a person who furnishes a kidney for renal transplant.

Double coverage. When a CHAMPUS beneficiary also is enrolled in another insurance, medical service, or health plan that duplicates all or part of a beneficiary's CHAMPUS benefits.

Double coverage plan. The specific insurance, medical service, or health plan under which a CHAMPUS beneficiary has entitlement to medical beneifts that duplicate CHAMPUS benefits in whole or in part. Double coverage plans do not include:

(i) Medicaid.

(ii) Coverage specifically designed to supplement CHAMPUS benefits.

(iii) Entitlement to receive care from the Uniformed Services medical facilities; or

(iv) Entitlement to receive care from Veterans Administration medical care facilities.

Durable medical equipment. Equipment for which the allowable charge is over $100 and which:

(i) Is medically necessary for the treatment of a covered illness or injury;

(ii) Improves the function of a malformed, diseased, or injured body part, or retards further deterioration of a patient's physical condition;

(iii) Is used primarily and customarily to serve a medical purpose rather than primarily for transportation, comfort, or convenience;

(iv) Can withstand repeated use;

(v) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury and nondeluxe); and

(vi) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids, or other communication devices.

Emergency inpatient admission. An unscheduled, unexpected, medically necessary admission to a hospital or other authorized institutional provider for treatment of a medical condition meeting the definition of medical emergency and which is determined to require immediate inpatient treatment by the attending physician.

Essentials of daily living. Care that consists of providing food (including special diets), clothing, and shelter; personal hygiene services; observation and general monitoring, bowel training or management; safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; companionship; recreation; transportation; and such other elements of personal care that reasonably can be performed by an untrained adult with minimal instruction or supervision.

Experimental. Medical care that essentially is investigatory or an unproven procedure or treatment regimen (usually performed under controlled medicolegal conditions) that does not meet the generally accepted standards of usual professional medical practice in the general medical community. The conduct of biomedical or behavioral research involving human subjects at risk to physical, psychological, or social injury is experimental medicine. For the purposes of CHAMPUS, any medical services or supplies provided under a scientific research grant, either public or private, are classified as "experimental." (Financial grants-in-aid to an individual beneficiary are not considered grants for this purpose.) Use of drugs and medicines and devices not approved by the Food and Drug Administration for general use by humans (even though approved for testing on human beings) also is considered experimental. However, if a drug or medicine is listed in the *U.S. Pharmacopeia* or the *National Formulary* and requires a prescription, it is not considered experimental even if it is under investigation by the U.S. Food and Drug Administration as to its effectiveness.

NOTE: In areas outside the United States, standards comparable to those of the U.S. Food and Drug Administration is the CHAMPUS objective.

Extramedical individual providers of care. Individuals who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field, as specified in § 199.6 of this part.

Former spouse. A former husband or wife of a Uniformed Service member or former mmeber who meets the criteria as set forth in § 199.3(b)(2)(ii) of this part.

Full-time course of higher education. A complete, progressive series of studies to develop attributes such as knowledge, skill, mind, and character, by formal schooling at a college or university, and which meets the criteria set out in § 199.3 of this part. To qualify as full-time, the student must be carrying a course load of a minimum of 12 credit hours or equivalent each semester.

General staff nursing service. All nursing care (other than that provided by private duty nurses) including, but not limited to, general duty nursing, emergency room nursing, recovery room nursing, intensive nursing care, and group nursing arrangements performed by nursing personnel on the payroll of the hospital or other authorized institution.

Good faith payments. Those payments made to civilian sources of medical care who provided medical care to persons purporting to be eligible beneficiaries but who are determined later to be ineligible for CHAMPUS benefits. (The ineligible person usually possesses an erroneous or illegal identification card.) To be considered for good faith payments, the civilian source of care must have exercised reasonable precautions in identifying a person claiming to be an eligible beneficiary.

Hospital, acute care (general and special). An institution that meets the criteria as set forth in § 199.6(b)(4)(i) of this part.

Hospital, long-term (tuberculosis, chronic care, or rehabilitation). An institution that meets the criteria as set forth in § 199.6(b)(4)(iii) of this part.

Hospital, phychiatric. An institution that meets the criteria as set forth in § 199.6(b)(4)(ii) of this part.

Illegitimate child. A child not recognized as a lawful offspring; that is, a child born of parents not married to each other.

Immediate family. The spouse, natural parent, child and sibling, a dopted child and adoptive parent, stepparent, stepchild, grandparent, grandchild, stepbrother and stepsister, father-in-law, mother-in-law of the beneficiary, or provider, as appropriate. For purposes of this definition only, to determine who may render services to a beneficiary, the step-relationship continues to exist even if the marriage upon which the relationship is based terminates through divorce or death of one of the parents.

Independent laboratory. A freestanding laboratory approved for participation under Medicare and certified by the Health Care Financing Administration.

Infirmaries. Facilities operated by student health departments of colleges and universities to provide inpatient or outpatient care to enrolled students. When specifically approved by the Director, OCHAMPUS, or a designee, a boarding school infirmary also is included.

Initial determination. A formal written decision on a CHAMPUS claim, a request for benefit authorization, a request by a provider for approval as an authorized CHAMPUS provider, or a decision disqualifying or excluding a provider as an authorized provider under CHAMPUS. Rejection of a claim or a request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding CHAMPUS benefits are not initial determinations.

In-out surgery. Surgery performed in the outpatient department of a hospital or other institutional provider, in a physician's office or the office of another individual professional provider, in a clinic, or in a "freestanding" ambulatory surgical center which does not involve a formal inpatient admission for a period of 24 hours or more.

Inpatient. A patient who has been admitted to a hospital or other authorized institution for bed occupancy for purposes of receiving necessary medical care, with the reasonable expectation that the patient will remain in the institution at least 24 hours, and with the registration and assignment of an inpatient number or designation. Institutional care in connection with in and out (ambulatory) surgery is not included within the meaning of inpatient whether or not an inpatient number or designation is made by the hospital or other institution. If death occurs before actual inpatient admission (such as in the emergency room), no inpatient admission exists even though had the patient lived, an inpatient admission would have occurred.

Intensive care unit (ICU). A special segregated unit of a hospital in which patients are concentrated by reason of serious illness, usually without regard to diagnosis. Special lifesaving techniques and equipment regularly and immediately are available within the unit, and patients are under continuous observation by a nursing staff specially trained and selected for the care of this type patient. The unit is maintained on a continuing rather than an intermittent or temporary basis. It is not a postoperative recovery room nor a postanesthesia room. In some large or highly specialized hospitals, the ICUs may be further refined for special purposes, such as for respiratory conditions, cardiac surgery, coronary care, burn care, or neurosurgery. For the purposes of CHAMPUS, these specialized units would be considered ICUs if they otherwise conformed to the definition of an ICU.

Intern. A graduate of a medical or dental school serving in a hospital in preparation to being licensed to practice medicine or dentistry.

Laboratory and pathological services. Laboratory and pathological examinations (including machine diagnostic tests that produce hard-copy results) ordered by the attending physician when necessary to, and rendered in connection with medical, obstetrical, or surgical diagnosis or treatment of an illness or injury, or in connection with well-baby care.

Legitimized child. A formerly illegitimate child who is considered legitimate by reason of qualifying actions recognized in law.

Licensed practical nurse (L.P.N.). A person who is prepared specially in the scientific basis of nursing; who is a graduate of a school of practical nursing; whose qualifications have been examined by a state board of nursing; and who has been authorized legally to practice as an L.P.N. under the supervision of a physician.

Licensed vocational nurse (L.V.N.) A person who specifically is prepared in the scientific basis or nursing; who is a graduate of a school of vocational nursing; whose qualifications have been examined by a state board of nursing; and who has been authorized legally to practice as a L.V.N. under the supervision of a physician.

Long-term hospital care. Any inpatient hospital stay that exceeds 30 days.

Management plan. A detailed description of the medical history of and proposed therapy for a CHAMPUS beneficiary seeking benefits under the PFTH as set forth in § 199.5 of this part. A management plan must include, at a minimum, a diagnosis (either in the *International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)* or the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III)*); detailed reports of prior treatment, family history, social history, history of handicapping condition, and physical examination; diagnostic test results; consultants (if any) reports; proposed therapeutic approach and modality (including anticipated length of time the proposed modality will be required); prognosis; problem list; and all inclusive current or anticipated monthly charges related to the proposed management plan. If the management plan involves the transfer of a beneficiary from a hospital or another inpatient facility, medical records related to that inpatient stay also are required as a part of the management plan documentation.

Marriage and family counselor or pastoral counselor. A person who has completed a recognized graduate professional education with the minimum of an earned master's degree from an accredited educational institution in an appropriate behavioral science field or mental health discipline and meets the experience requirements set forth in § 199.6 of this part.

Maternity care. Care and treatment related to conception, delivery, and abortion, including prenatal and postnatal care (generally through the 6th post-delivery week), and also including treatment of the complications of pregnancy.

Medicaid. Those medical benefits authorized under Title XIX of the Social Security Act provided to welfare recipients and the medically indigent through programs administered by the various states.

Medical. The generally used term which pertains to the diagnosis and treatment of illness, injury, pregnancy, and mental disorders by trained and licensed or certified health professionals. For purposes of CHAMPUS, the term "medical" should be understood to include "medical, psychological, surgical, and obstetrical," unless it is specifically stated that a more restrictive meaning is intended.

Medical emergency. The sudden and unexpected onset of a medical condition or the acute exacerbation of a chronic condition that is threatening to life, limb, or sight, and requires immediate medical treatment or which manifests painful symptomatology requiring immediate palliative efforts to alleviate suffering. Medical emergencies include heart attacks, cardiovascular accidents, poisoning, convulsions, kidney stones, and such other acute medical conditions as may be determined to be medical emergencies by the Director, OCHAMPUS, or a designee. In the case of a pregnancy, a medical emergency must involve a sudden and unexpected medical complication that puts the mother, the baby, or both, at risk. Pain would not, however, qualify a maternity case as an emergency, nor would incipient birth after the 34th week of gestation, unless an otherwise qualifying medical condition is present. Examples of medical emergencies related to pregnancy or delivery are hemorrhage, ruptured membrane with prolapsed cord, placenta previa, abruptio placenta, presence of shock or unconsciousness, suspected heart attack or stroke, or trauma (such as injuries received in an automobile accident).

Medically or psychologically necessary. The frequency, extent, and types of medical services or supplies which represent appropriate medical care and that are generally accepted by qualified professionals to be reasonable and adequate for the diagnosis and treatment of illness, injury, pregnancy, and mental disorders or that are reasonable and adequate for well-baby care.

Medical supplies and dressings (consumables). Necessary medical or surgical supplies (exclusive of durable medical equipment) that do not withstand prolonged, repeated use and that are needed for the proper medical management of a condition for which benefits are otherwise authorized under CHAMPUS, on either an inpatient or outpatient basis. Examples include disposable syringes for a diabetic, colostomy sets, irrigation sets, and ace bandages.

Medicare. These medical benefits authorized under Title XVIII of the Social Security Act provided to persons 65 or older, certain disabled persons, or persons with chronic renal disease, through a national program administered by the DHHS, Health Care Financing Administration, Medicare Bureau.

Mental disorder. For purposes of the payment of CHAMPUS benefits, a mental disorder is a nervous or mental condition that involves a clinically significant behavioral or psychological syndrome or pattern that is associated with a painful symptom, such as distress, *and* that impairs a patient's ability to function in one or more major life activities. Additionally, the mental disorder must be one of those conditions listed in the DSM-III.

Mental retardation. Subnormal general intellectual functioning associated with impairment of either learning and social adjustment or maturation, or both. The diagnostic classification of moderate and severe mental retardation relates to intelligence quotient (IQ) as follows:

(i) *Moderate.* Moderate mental retardation IQ 36-51.

(ii) *Severe.* Severe mental retardation IQ 35 and under.

Missing in action (MIA). A battle casualty whose whereabouts and status are unknown, provided the absence appears to be involuntary and the service member is not known to be in a status of unauthorized absence.

NOTE: Claims for eligible CHAMPUS beneficiaries whose sponsor is classified as MIA are processed as dependents of an active duty service member.

Morbid obesity. The body weight is 100 pounds over ideal weight for height and bone structure, according to the most current Metropolitan Life Table, and such weight is in association with severe medical conditions known to have higher mortality rates in association with morbid obesity; or, the body weight is 200 percent or more of the ideal weight for height and bone structure according to the most current Metropolitan Life Table. The associated medical conditions are diabetes mellitus, hypertension, cholecystitis, narcolepsy, pickwickian syndrome (and other severe respiratory diseases), hypothalmic disorders, and severe arthritis of the weight-bearing joints.

North Atlantic Treaty Organization (NATO) member. A military member of an armed force of a foreign NATO nation who is on active duty and who, in connection with official duties, is stationed in or passing through the United States. The foreign NATO nations are Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom.

Naturopath. A person who practices naturopathy, that is, a drugless system of therapy making use of physical forces such as air, light, water, heat, and massage.

NOTE: Services of a naturopath are not covered by CHAMPUS.

Nonavailability statement. A certification by a commander (or a designee) of a Uniformed Services medical treatment facility recorded on DD Form 1251, generally for the reason that the needed medical care being requested by a CHAMPUS beneficiary cannot be provided at the facility concerned because the necessary resources are not available.

Nonparticipating provider. A hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider that furnished medical services or supplies to a CHAMPUS beneficiary, but who did not agree on the CHAMPUS claim form to participate or to accept the CHAMPUS-determined allowable cost or charge as the total charge for the services. A nonparticipating provider looks to the beneficiary or sponsor for payment of his or her charge, not

CHAMPUS. In such cases, CHAMPUS pays the beneficiary or sponsor, not the provider.

Official formularies. A book of official standards for certain pharmaceuticals and preparations that are not included in the *U.S. Pharmacopeia.*

Optometrist (Doctor of Optometry). A person trained and licensed to examine and test the eyes and to treat visual defects by prescribing and adapting corrective lenses and other optical aids, and by establishing programs of exercises.

Oral surgeon (D.D.S. or D.M.D.). A person who has received a degree in dentistry and who limits his or her practice to oral surgery, that is, that branch of the healing arts that deals with the diagnosis and the surgical correction and adjunctive treatment of diseases, injuries, and defects of the mouth, the jaws, and associated structures.

Orthopedic shoes. Shoes prescribed by an orthopedic surgeon to effect changes in foot or feet position and alignment and which are not an integral part of a brace.

Other allied health professionals. Individual professional providers other than physicians, dentists, or extramedical individual providers, as specified in § 199.6 of this part.

Other specialized treatment facilities (STFs). Certain specialized medical treatment facilities, either inpatient or outpatient, other than those specifically defined, that provide courses of treatment prescribed by a doctor of medicine or osteopathy; when the patient is under the supervision of a doctor of medicine or osteopathy during the entire course of the inpatient admission or the outpatient treatment; when the type and level of care and services rendered by the institution are otherwise authorized in this Regulation; when the facility meets all licensing or other certification requirements that are extant in the jurisdiction in which the facility is located geographically; which is accredited by the Joint Commission on Accreditation if an appropriate accreditation program for the given type of facility is available; and which is not a nursing home, intermediate facility, halfway house, home for the aged, or other institution of similar purpose.

Outpatient. A patient who has not been admitted to a hospital or other authorized institution as an inpatient.

Participating provider. A hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider that furnished services or supplies to a CHAMPUS beneficiary and that has agreed, by act of signing and submitting a CHAMPUS claim form and indicating participation in the appropriate space on the claim form, to accept the CHAMPUS-determined allowable cost or charge as the total charge (even though less than the actual billed amount), whether paid for fully by the CHAMPUS allowance or requiring cost-sharing by the beneficiary (or sponsor).

Party to a hearing. An appealing party or parties and CHAMPUS.

Party to the initial determination. Includes CHAMPUS and also refers to a CHAMPUS beneficiary and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, a provider who has been denied approval as an authorized CHAMPUS provider is a party to that initial determination, as is a provider who is disqualified or excluded as an authorized provider under CHAMPUS, unless the provider is excluded based on a determination of abuse or fraudulent practices or procedures under another federal or federally funded program. See § 199.10 for additional information concerning parties not entitled to administrative review under the CHAMPUS appeals and hearing procedures.

Pharmacist. A person who is trained specially in the scientific basis of pharmacology and who is licensed to prepare and sell or dispense drugs and compounds and to make up prescriptions ordered by a physician.

Physical medicine services or physiatry services. The treatment of disease or injury by physical means such as massage, hydrotherapy, or heat.

Physical handicap. A physical condition of the body that meets the following criteria:

(i) *Duration*. The condition is expected to result in death, or has lasted, or with reasonable certainty is expected to last, for a minimum period of 12 months; and

(ii) *Extent*. The condition is of such severity as to preclude the individual from engaging in substantially basic productive activities of daily living expected or unimpaired persons of the same age group.

Physical therapist. A person who is trained specially in the skills and techniques of physical therapy (that is, the treatment of disease by physical agents and methods such as heat, massage, manipulation, therapeutic exercise, hydrotherapy, and various forms of energy such as electrotherapy and ultrasound), who has been authorized legally (that is, registered) to administer treatments prescribed by a physician and who is entitled legally to use the designation "Registered Physical Therapist." A physical therapist also may be called a physiotherapist.

Physician. A person with a degree of Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) who is licensed to practice medicine by an appropriate authority.

Podiatrist (Doctor of Podiatry or Surgical Chiropody). A person who has received a degree in podiatry (formerly called chiropody), that is, that specialized field of the healing arts that deals with the study and care of the foot, including its anatomy, pathology, and medical and surgical treatment.

Preauthorization. A decision issued in writing by the Director, OCHAMPUS, or a designee, that CHAMPUS benefits are payable for certain services that a beneficiary has not yet received.

Prescription drugs and medicines. Drugs and medicines which at the time of use were approved for general use by humans by the U.S. Food and Drug Administration as listed in the *U.S. Pharmacopeia* and *National Formulary*, were available commercially, and which, by law of the United States, require a physician's or dentist's prescription, except that it includes insulin for known diabetics whether or not a prescription is required.

NOTE: The fact that the U.S. Food and Drug Administration has approved a drug for testing on humans would not qualify it within this definition.

Preventive care. Diagnostic and other medical procedures not related directly to a specific illness, injury, or definitive set of symptoms, or obstetrical care, but rather performed as periodic health screening, health assessment, or health maintenance.

Primary payer. The plan or program whose medical benefits are payable first in a double coverage situation.

Private duty (special) nursing services. Skilled nursing services rendered to an individual patient requiring intensive medical care. Such private duty (special) nursing must be by an actively practicing registered nurse (R.N.) or licensed practical or vocational nurse (L.P.N. or L.V.N.) only when the medical condition of the patient requires intensive skilled nursing services (rather than primarily providing the essentials of daily living) and when such skilled nursing care is ordered by the attending physician.

Private room. A room with one bed that is designated as a private room by the hospital or other authorized institutional provider.

Program for the handicapped (PFTH). The special program set forth in § 199.5 of this part, through which dependents of active duty members receive supplemental benefits for the moderately or severely mentally retarded and the seriously physically handicapped over and above those medical benefits available under the Basic Program.

Prosthetic device (prosthesis). An artificial substitute for a missing body part.

Provider. A hospital or other institutional provider, a physician, or other individual professional provider, or other provider of services or supplies as specified in § 199.6 of this part.

Radiation therapy services. The treatment of diseases by x-ray, radium, or radioactive isotopes when ordered by the attending physician.

Referral. The act or an instance of referring a CHAMPUS beneficiary to another authorized provider to obtain necessary medical treatment. Under

CHAMPUS, only a physician may make referrals.

Registered nurse. A person who is prepared specially in the scientific basis of nursing, who is a graduate of a school of nursing, and who is registered for practice after examination by a state board of nurse examiners or similar regulatory authority, who holds a current, valid license, and who is entitled legally to use the designation R.N.

Representative. Any person who has been appointed by a party to the initial determination as counsel or advisor and who is otherwise eligible to serve as the counsel or advisor of the party to the initial determination, particularly in connection with a hearing.

Resident (medical). A graduate physician or dentist who has an M.D. or D.O. degree, or D.D.S. or D.M.D. degree, respectively, is licensed to practice, and who choose to remain on the house staff of a hospital to get further training that will qualify him or her for a medical or dental specialty.

Residential treatment center (RTC). A facility (or distinct part of a facility) which meets the criteria in § 199.6(b)(4)(v).

Retiree. A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

Routine eye examinations. The services rendered in order to determine the refractive state of the eyes.

Secondary payer. The plan or program whose medical benefits are payable in double coverage situations only after the primary payer has adjudicated the claim.

Semiprivate room. A room containing at least two beds. If a room is designated publicly as a semiprivate accommodation by the hospital or other authorized institutional provider and contains multiple beds, it qualifies as a semiprivate room for the purposes of CHAMPUS.

Skilled nursing facility. An institution (or a distinct part of an institution) that meets the criteria as set forth in § 199.6(b)(4)(iv) of this part.

Skilled nursing service. A service that can only be furnished by an R.N., or L.P.N. or L.V.N., and is required to be performed under the supervision of a physician to ensure the safety of the patient and achieve the medically desired result. Examples of skilled nursing services are intravenous for intramuscular injections, levin tube or gastrostomy feedings, or tracheotomy aspiration and insertion. Skilled nursing services are other than those services that provide primarily support for the essentials of daily living or that could be performed by an untrained adult with minimum instruction or supervision.

Special tutoring. Teaching or instruction provided by a private teacher to an individual usually in a private or separate setting to enhance the educational development of an individual in one or more study areas.

Spectacles, eyeglasses, and lenses. Lenses, including contact lenses, that help to correct faulty vision.

Sponsor. An active duty member, retiree, or deceased active duty member or retiree, of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based.

Spouse. A lawful wife or husband regardless of whether or not dependent upon the active duty member or retiree.

Student status. A dependent of a member or former member of a Uniformed Service who has not passed his or her 23rd birthday, and is enrolled in a full-time course of study in an institution of higher learning.

Suppliers of portable X-ray services. A supplier that meets the conditions of coverage of the Medicare program, set forth in the Medicare regulations (42 CFR 405.1411 through 405.1416 (as amended)) or the Medicaid program in the state in which the covered service is provided.

Surgery. Medically appropriate operative procedures, including related preoperative and postoperative care; reduction of fractures and dislocations; injections and needling procedures of the joints; laser surgery of the eye; and those certain procedures listed in § 199.4(c)(2)(i) of this part.

Surgical assistant. A physician who assists the operating surgeon in the performance of a covered surgical service when such assistance is certified as necessary by the attending surgeon, when the type of surgical procedure being performed is of such complexity and seriousness as to require a surgical assistant, and when interns, residents, or other house staff are not available to provide the surgical assistance services in the specialty area required.

Timely filing. The filing of CHAMPUS claims within the prescribed time limits as set forth in § 199.7 of this part.

Treatment plan. A detailed description of the medical care being rendered or expected to be rendered a CHAMPUS beneficiary seeking approval for inpatient benefits for which preauthorization is required as set forth in § 199.4(b) of this part. A treatment plan must include, at a minimum, a diagnosis (either ICD-9-CM or DSM-III); detailed reports of prior treatment, medical history, family history, social history, and physical examination; diagnostic test results; consultant's reports (if any); proposed treatment by type (such as surgical, medical, and psychiatric); a description of who is or will be providing treatment (by discipline or specialty); anticipated frequency, medications, and specific goals of treatment; type of inpatient facility required and why (including length of time the related inpatient stay will be required); and prognosis. If the treatment plan involves the transfer of a CHAMPUS patient from a hospital or another inpatient facility, medical records related to that inpatient stay also are required as a part of the treatment plan documentation.

Uniformed Services. The Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

Veteran. A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

NOTE: Unless the veteran is eligible for "retired pay," "retirement pay," or "retainer pay," which refers to payments of a continuing nature and are payable at fixed intervals from the government for military service neither the veteran nor his or her dependents are eligible for benefits under CHAMPUS.

Well-baby care. A specific program of periodic health screening, developmental assessment, and routine immunization for children from birth up to 2 years.

Widow or widower. A person who was a spouse at the time of death of the active duty member or retiree and who has not remarried.

Worker's compensation benefits. Medical benefits available under any worker's compensation law (including the Federal Employees Compensation Act), occupational disease law, employers liability law, or any other legislation of similar purpose, or under the maritime doctrine of maintenance, wages, and cure.

X-ray services. An x-ray examination from which an x-ray film or other image is produced, ordered by the attending physician when necessary and rendered in connection with a medical or surgical diagnosis or treatment of an illness or injury, or in connection with maternity or well-baby care.

§ 199.3 Eligibility.

(a) *General.* This section sets forth those persons who, by the provisions of 10 U.S.C. Chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. For additional statements concerning the special requirements of the PFTH, refer to § 199.5 of this part. A determination that a person is eligible does not entitle such a person automatically to CHAMPUS payments. Other sections of this part set forth additional requirements that must be met before any CHAMPUS benefits may be extended. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical facility capable of providing the needed care is available.

(b) *Persons eligible*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(2) *Dependent.* A person who bears one of the following relationships to an active duty member (under a call or

order that does not specify a period of 30 days or less), to a retiree, to a NATO member who is stationed in or passing through the United States on official business, or to a deceased person who, at the time of death, was an active duty member or a retiree.

NOTE: According to section 767 of the Department of Defense Appropriation Act, 1981, (Pub. L. 96-527), from December 15, 1980, through September 30, 1981, spouses and children of NATO members are eligible only for *outpatient* CHAMPUS benefits while officially accompanying the NATO member who is stationed in or passing through the United States on official business. Availability of benefits after September 30, 1981, will depend on the language of future appropriation acts.

(i) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty member or retiree.

(ii) *Former spouse.* To be eligible, a former spouse:

(A) Must be unremarried;

(B) Must not be covered by an employer-sponsored health plan;

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must meet the requirements of either paragraph (b)(2)(ii)(D)(*1*) or (b)(2)(ii)(D)(*2*) of this section.

(*1*) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for health care furnished on or after February 1, 1983.

(*ii*) If the date of the final decree of divorce, dissolution, or annulment is before February 1, 1983, the former spouse is eligible only for health care furnished on or after January 1, 1985.

(*2*) The former spouse must have been married to the same member or former member for at least 20 years, at least 15, but less than 20, of which were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985.

(*ii*) If the date of the final decree of divorce, dissolution, or annulment is on or after April 1, 1985, the former spouse is eligible for only 2 years beginning on the date of such final decree.

NOTE: For purposes of this part, a former spouse cannot be a dependent of a NATO member.

(iii) *Widow or widower.* A person who was a spouse at the time of death of the active duty member or retiree and who has not remarried.

NOTE: For purposes of this part, an unremarried widow or widower is not an eligible dependent of a NATO member.

(iv) *Child.* To be eligible, the child must be unmarried and a member of one of the classes set forth in paragraph (b)(2)(iv) (A) or (B) of this section, and who also meets the requirements of paragraph (b)(2)(iv)(C) of this section.

(A) *Child of active duty member.*

(*1*) A legitimate child.

(*2*) An adopted child whose adoption has been completed legally.

(*3*) A legitimate stepchild.

(*4*) An illegitimate child of a male member whose paternity has been determined judicially, or an illegitimate child of record of a female member who has been directed judicially to support the child.

(*5*) An illegitimate child of a male active duty member whose paternity has not been determined judicially, or an illegitimate child of record of a female active duty member who—

(*i*) Resides with or in a home provided by the member; and

(*ii*) Is and continues to be dependent upon the member for over 50 percent of his or her support.

(*6*) An illegitimate child of the spouse of an active duty member (that is, the active duty member's stepchild) who—

(*i*) Resides with or in a home provided by the active duty member or the parent who is the spouse of the member; and

(*ii*) Is and continues to be dependent upon the member for over 50 percent of his or her support.

(B) *Child of retiree, or deceased member or retiree.*

(*1*) A legitimate child.

(*2*) An adopted child whose adoption has been completed legally.

(*3*) A legitimate stepchild.

(*4*) An illegitimate child of a male retiree whose paternity has been determined judicially, or an illegitimate child of record of a female retiree who has been directed judicially to support the child.

(*5*) An illegitimate child of a male retiree, or deceased male member or retiree whose paternity has not been determined judicially or an illegitimate child of record of a female retiree, or deceased female member or retiree who—

(*i*) Resides with or in a home provided by the retiree, or which was being provided by the deceased member or retiree at the time of death; and

(*ii*) Is and continues to be dependent upon the retiree for over 50 percent of his or her support, or who was so dependent on the deceased member or retiree at the time of death.

(*6*) An illegitimate child of the spouse of a retiree or deceased member or retiree (that is, the retiree's stepchild or stepchild of a deceased member or retiree at the time of death) who—

(*i*) Resides with or in a home provided by the retiree or the parent who is the spouse of the retiree or was the spouse of the deceased member or retiree at the time of death; and

(*ii*) Is and continues to be dependent upon the retiree for 50 percent of his or her support, or who was so dependent on the deceased member or retiree at the time of death.

(C) *Additional requirements for a child who is a member of one of the classes in paragraphs (b)(2)(iv) (A) and (B) of this section.* The child must not be married. Additionally, he or she must be in one of the following three age groups:

(*1*) Not passed his or her 21st birthday.

(*2*) Passed his or her 21st birthday but incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and dependent on the member or retiree for over 50 percent of his or her support, or dependent upon the member or retiree for over 50 percent of his or her support on the date of the member's or retiree's death. Such incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity recurs subsequently, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity. If the child was not handicapped mentally or physically at his or her 21st birthday, but becomes so incapacitated after that time, no CHAMPUS eligibility exists on the basis of the incapacity.

(*3*) Passed his or her 21st birthday but not his or her 23rd birthday, dependent upon the member or retiree for over 50 percent of his or her support, or dependent upon the member or retiree for over 50 percent of his or her support on the date of the member's or retiree's death, and pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C. Chapters 34 and 35.

NOTE: Courses of education offered by institutions listed in the "Education Directory, Part 3, Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Secretary of Defense or the Department of Education (refer to paragraph (b)(2)(iv)(C)(*3*) of this section. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to Chapters 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(c) *Beginning dates of eligibility*—(1) *General.* The beginning date of eligibility is dependent upon the class to which the person belongs and the date the person became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) *Beginning dates of class eligibility*—(i) *Spouse, legitimate child, adopted child, or (legitimate) stepchild of an active duty member.*

(A) For the medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956.

(B) For outpatient medical benefits under the Basic Program, October 1, 1966.

(C) For inpatient medical benefits under the Basic Program, January 1, 1967.

(D) For benefits under the PFTH, January 1, 1967.

(ii) *Retiree.* For medical benefits under the Basic Program, January 1, 1967.

NOTE: Retirees and their dependents are not eligible for benefits of the PFTH.

(iii) *Spouse, legitimate child, adopted child, or (legitimate) stepchild of a retiree or of a deceased member or retiree; widow or widower of deceased member or retiree.* For medical benefits under the Basic Program, January 1, 1967.

NOTE: These classes do not have eligibility for benefits of the PFTH.

(iv) *Illegitimate child of a male active duty member or retiree (or deceased member or retiree) whose paternity has been determined judicially or an illegitimate child of record of a female active duty member or retiree (or deceased member or retiree) who has been directed judicially to support the child.* For all benefits for which otherwise eligible, August 31, 1972.

(v) *Illegitimate child of male active duty member or retiree (or deceased male member or retiree) whose paternity has not been determined judicially, or an illegitimate child of record of a female active duty member or retiree (or deceased female member or retiree) who resides with or in a home provided by the active duty member or retiree (or which was being provided by the deceased member or retiree at the time of death) and who is dependent on the member for over 50 percent of his or her support (or was so dependent on the deceased member or retiree at the time of death).* For all benefits for which otherwise eligible, January 1, 1969.

(vi) *Illegitimate child of the spouse of an active duty member or retiree (that is, the member or retiree's stepchild or stepchild of a deceased member or retiree at the time of death) who resides with or in a home provided by the active duty member or retiree, or the parent who is the spouse of the active duty member or retiree (or was the spouse of the deceased member or retiree at the time of death), and who is dependent upon the active duty member or retiree for over 50 percent of his or her support (or was so dependent on the deceased member or retiree at the time of death).* For medical benefits under the Basic Program, January 1, 1969. For benefits under the PFTH, dependents of an active duty member only, January 1, 1969.

NOTE.—Retirees or their dependents do not have eligibility for benefits of the PFTH.

(d) *Dual coverage.* When an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual coverage, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility of dual coverage is therefore terminated as of 12:01 a.m. on the day following the day dual coverage begins. (However, any dependent children in a marriage of two active duty persons or an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor.) Should a spouse or dependent who has dual coverage leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsor.

(e) *Changes in and termination of eligibility*—(1) *Changes in status of active duty member.* When an active duty member's period of active duty ends (for any reason other than retirement or death), his or her dependents lose their eligibility as of 12:01 a.m. of the day following the day the active duty ends. Entitlement to CHAMPUS benefits also ceases as of 12:01 a.m. of the day following the day a member is placed in desertion status. The member's dependent regains eligibility when the member is returned to military control. A member serving a sentence of confinement in conjunction with a sentence of a punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in status of retiree.* Should a retiree cease to be entitled to retired, retainer, or equivalent pay for any reason, that person and his or her dependents lose their eligibility as of 12:01 a.m. of the day following the day the retiree ceases to be entitled to such pay unless such persons are otherwise eligible. A retiree who waives his or her retired, retainer, or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Changes in status of dependent.*—(i) *Divorce.* Except as provided in paragraph (b)(2)(ii) of this section, a spouse separated from an active duty member or retiree by a final divorce decree loses all eligibility based on his or her former marital relationship as of 12:01 a.m. of the day following the day the divorce becomes final. The eligibility of the member's or retiree's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 12:01 a.m. the day following the day the divorce becomes final.

(ii) *Annulment.* Except as provided in paragraph (b)(2)(ii) of this section, a spouse whose marriage to an active duty member or retiree is dissolved by annulment loses eligibility as of 12:01 a.m. of the day following the date the court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of CHAMPUS eligibility. When there are children, the eligibility of the member's or retiree's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 12:01 a.m. of the day following the day the court grants the annulment order.

(iii) *Adoption.* A child of an active duty member or retiree who is adopted by a person, other than a person whose dependents are eligible for CHAMPUS benefits while the active duty member or retiree is living, thereby severing the legal relationship between the child and the sponsor, loses eligibility as of 12:01 a.m. of the day following the day the adoption becomes final. However, an adoption occurring after the death of an active duty member or retiree would not result in loss of the child's eligibility, since there would be no termination of the legal relationship between the child and the deceased sponsor.

(iv) *Marriage of child.* A child of an active duty member or retiree, who marries a person whose dependents are not eligible for CHAMPUS, loses eligibility as of 12:01 a.m. on the day following the day of the marriage. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes a CHAMPUS eligible dependent as of 12:01 a.m. of the day following the day of the occurrence that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of CHAMPUS eligibility, unless based on other entitlement.

(v) *Marriage of widow or widower.* The remarriage of a widow or widower of an active duty member or retiree to a person whose dependents are not eligible for CHAMPUS terminates his or her CHAMPUS eligibility as of 12:01 a.m. of the day following the day of marriage. Even if such remarriage should terminate for any reason, CHAMPUS benefits cannot be reinstated. However, the child of the widow or widower who was the stepchild of the deceased active duty member or retiree at the time of death continues to have the same CHAM-

BEST COPY AVAILABLE

PUS eligibility as other classes of dependent children.

(vi) *Attainment of entitlement to hospital insurance benefits (Part A) under Medicare.* Retirees, and all other CHAMPUS eligible persons except dependents of active duty members lose their eligibility for CHAMPUS if they become eligible for hospital insurance benefits (Part A) of Medicare. This is true even though the persons attaining such status live outside the United States where Medicare benefits are not available.

(A) *Loss of CHAMPUS eligibility: Age.* All CHAMPUS beneficiaries, except dependents of active duty members, and beneficiaries not eligible for Part A of Medicare, lose CHAMPUS eligibility at midnight on the last day of the month preceding the month of attainment of age 65. (For Medicare purposes, an individual attains age 65 the day before his or her 65th birthday.) If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued.

(B) *Loss of CHAMPUS eligibility: End stage renal disease and disability—(1) End stage renal disease.* Medicare coverage begins with the third month after the month a course of maintenance dialysis begins, or with the first month of dialysis if the individual participates in a self-dialysis training program during the 3-month waiting period, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed within the following 2 months). If a transplant is delayed more than 2 months after the preparatory hospitalization, Medicare coverage will begin with the second month prior to the month of transplant. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease.

(2) *Disability.* Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person.

(C) *Reinstatement of CHAMPUS eligibility—(1) Age limitation.* Beneficiaries who lose their CHAMPUS eligibility because they reached the age limitation and were eligible for Part A, cannot be reinstated under CHAMPUS.

(2) *End stage renal disease.* Medicare coverage ceases for end stage renal disease patients with the 36th month after the month in which a successful kidney transplant takes place or with the 12th month after the month in which the course of maintenance dialysis ends. At this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(3) *Disability.* Some disabilities are permanent, other temporary. Each case must be reviewed individually. When disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Agan, he or she is required to take action to obtain a new CHAMPUS identification card.

(D) *Other Medicare entitlement.* Entitlement only to supplementary medical insurance (Part B) of Medicare, but not Part A, or to Part A through the Premium-HI provision (provided for under the 1972 Amendments to the Social Security Act) does not affect CHAMPUS eligibility for any class of beneficiary. The only impact relates to double coverage (refer to § 199.8 of this part).

(vii) Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status. A child 21 or 22 years old who is pursuing a full-time course of higher education and who, either during the school year or between semester, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her

23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility related to mental or physical incapacity as described in paragraph (b)(2)(iv)(C)(*2*) of this section.

(f) *Determination of eligibility status*—(1) *Eligibility determinations responsibility of Uniformed Services.* Determination of a person's eligibility as a CHAMPUS beneficiary is the responsibility of the Uniformed Service in which the active duty member, retiree, deceased member, or deceased retiree is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(2) *Procedures for determination of eligibility.* Procedures for the determination of eligibility and issuance of identification cards evidencing eligibility are prescribed by the following regulatory documents:

(i) *Department of Defense.* DoD Instruction 1000.13.[6]

(ii) *Army.* AR 640-3, "Identification Cards, Tags, and Badges."

(iii) *Navy.* (A) NAVPERS 15560, articles 4620150 (active duty members) and 4620250 (retired members).

(B) NAVMILPERSCOMINST 1750.1 series, Uniformed Services Identification and Privilege Card (DD Form 1173); regulations governing.

(iv) *Marine Corps.* (A) MCO in P1900 series, Separation and Retirement Manual (DD Form 2MC-RETIRED).

(B) MCO in P1750 series, Uniformed Services Identification and Privilege Card (DD Form 1173).

(v) *Air Force.* AFR 30-20, "Issue and Control of Identification Cards."

(vi) *U.S. Public Health Service.* CC29.2, Personnel Instruction 1 and 2.

(vii) *Coast Guard.* Personnel Manual (CG 207, Chapter 13, Section E, and Chapter 18, Section C).

(viii) *NOAA.* No published regulations. Identification cards are issued by Headquarters, NOAA, or the applications are verified by Headquarters, NOAA, and presented to any Uniformed Service facility for issuance of a card.

(g) *Evidence of eligibility required.* Eligibility for CHAMPUS benefits will be verified through the DEERS (DoD 1341.1-M [7]).

(1) *Acceptable evidence of eligibility*—(i) *DEERS.* Eligibility information established and maintained in the DEERS files is acceptable evidence of eligibility.

(ii) *Identification cards or devices.* When the DEERS file is not accessible immediately, acceptable preliminary evidence of eligibility includes valid identification cards or devices officially prescribed and issued by the appropriate Uniformed Service. Dependents identification cards must confirm CHAMPUS eligibility.

(2) *Responsibility for obtaining evidence of eligibility.* It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility, and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action. Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file or in the absence of a valid identification card or device.

---

[6] See footnote 2 to § 199.1(c)(2)(i).

[7] See footnote 1 to § 199.1(c)(2)(i).

§ 199.4 Basic Program benefits.

(a) *General.* The CHAMPUS Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. The Basic Program is similar to private insurance programs, and is designed to provide financial assistance to CHAMPUS beneficiaries for certain prescribed medical care obtained from civilian sources.

(1) *Scope of benefits.* Subject to all applicable definitions, conditions, limitations, or exclusions specified in this part, the CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care and well-baby care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians, other authorized individual professional providers, and professional ambulance service, prescription drugs, authorized medical supplies, and rental or purchase of durable medical equipment.

(2) *Persons eligible for Basic Program benefits.* Persons eligible to receive the Basic Program benefits are set forth in § 199.3 of this part. Any person determined to be an eligible CHAMPUS beneficiary is eligible for Basic Program benefits.

(3) *Authority to act for CHAMPUS.* The authority to make benefit determinations and authorize the disbursement of funds under CHAMPUS is restricted to the Director, OCHAMPUS; designated OCHAMPUS staff; Director, OCHAMPUSEUR; or CHAMPUS fiscal intermediaries. No other persons or agents (such as physicians, staff members of hospitals, or CHAMPUS health benefits advisors) have such authority.

(4) *Status of patient controlling for purposes of cost-sharing.* Benefits for covered services and supplies described in this section will be extended either on an inpatient or outpatient cost-sharing basis in accordance with the status of the patient at the time the covered services and supplies were provided, unless otherwise specifically designated (such as for ambulance service or maternity care). For cost-sharing provisions, refer to paragraph (f) of this section.

(5) *Right to information.* As a condition precedent to the provision of benefits hereunder, OCHAMPUS or its CHAMPUS fiscal intermediaries shall be entitled to receive information from a physician or hospital or other person, institution, or organization (including a local, state, or U.S. Government agency) providing services or supplies to the beneficiary for which claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, or examination or diagnosis of, or treatment rendered, or services and supplies furnished to a beneficiary, and shall be necessary for the accurate and efficient administration of CHAMPUS benefits. Before a determination will be made on a request for preauthorization or claim of benefits, a beneficiary or sponsor must provide particular additional information relevant to the requested determination, when necessary. The recipient of such information shall in every case hold such records confidential except when—

(i) Disclosure of such information is authorized specifically by the beneficiary;

(ii) Disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions, or

(iii) Disclosure is authorized or required specifically under the terms of the Privacy Act or Freedom of Information Act (refer to § 199.1(m) of this part).

For the purposes of determining the applicability of and implementing the provisions of §§ 199.8, 199.11, and 199.12, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries may release, without consent or notice to any beneficiary or sponsor, to any person, organization, government agency, provider, or other entity any information with respect to any beneficiary when such release constitutes a routine use published in the FEDERAL REGISTER in accordance with DoD

5400.11-R (Privacy Act (5 U.S.C. 552a)). Before a person's claim of benefits will be adjudicated, the person must furnish to CHAMPUS information that reasonably may be expected to be in his or her possession and that is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(6) *Physical examinations.* The Director, OCHAMPUS, or a designee, may require a beneficiary to submit to one or more medical (including psychiatric) examinations to determine the beneficiary's entitlement to benefits for which application has been made or for otherwise authorized medically necessary services and supplies required in the diagnosis or treatment of an illness or injury (including maternity and well-baby care). When a medical examination has been requested, CHAMPUS will withhold payment of any pending claims or preauthorization requests on that particular beneficiary. If the beneficiary refuses to agree to the requested medical examination, or unless prevented by a medical reason acceptable to OCHAMPUS, the examination is not performed within 90 days of initial request, all pending claims for services and supplies will be denied. A denial of payments for services or supplies provided before (and related to) the request for a physical examination is not subject to reconsideration. The medical examination and required beneficiary travel related to performing the requested medical examination will be at the expense of CHAMPUS. The medical examination may be performed by a physician in a Uniformed Services medical facility or by an appropriate civilian physician, as determined and selected by the Director, OCHAMPUS, or a designee who is responsible for making such arrangements as are necessary, including necessary travel arrangements.

(7) *Timely filing of claims.* All claims submitted for benefits under this chapter must be filed with the appropriate CHAMPUS fiscal intermediary no later than December 31 of the calendar year immediately following the one in which the covered service or supply was rendered. Failure to file a claim timely waives automatically all rights to any benefits for such services or supplies (refer to § 199.7 of this part).

(8) *Double coverage and third party recoveries.* CHAMPUS claims involving double coverage or the possiblity that the United States can recover all or a part of its expenses from a third party, are specifically subject to the provisions of § 199.8 or § 199.12 of this part as appropriate.

(9) *Nonavailability Statements (DD Forms 1251).* In some geographic locations (or under certain special circumstances), it is necessary for a CHAMPUS beneficiary to determine whether the required medical care can be provided through a Uniformed Service facility. If the required medical care cannot be provided, the hospital commander, or a designee, will issue a Nonavailability Statement (DD Form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) *Rules applicable to issuance of Nonavailability Statement (DD Form 1251).* The ASD(HA) is responsible for issuing rules and regulations regarding Nonavailability Statements.

NOTE: According to section 8031 of the Department of Defense Appropriation Act for 1985 (Pub. L. 98-473), a nonavailability statement must be obtained for payment of non-emergency civilian inpatient care if a Uniformed Services hospital is within a 40-mile radius of the patient's residence. Effective for claims processed on or after October 12, 1984, this limitation shall not apply to payments that supplement primary coverage provided by other insurance plans or programs for inpatient care. Application of these provisions after September 30, 1985, will depend on the language of future appropriation acts.

(ii) *Beneficiary responsibility.* The beneficiary is responsible for securing information whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy, and Air Force Surgeon

Generals; or a CHAMPUS health benefits advisor; or the Director, OCHAMPUS, or a designee; or from the appropriate CHAMPUS fiscal intermediary.

(iii) *Rules in effect at time civilian medical care is provided apply.* The applicable rules and regulations regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a Nonavailability Statement is required.

(iv) *Nonavailability Statement (DD Form 1251) must be filed with applicable claim.* When a claim is submitted for CHAMPUS benefits that includes services for which a Nonavailability Statement was issued, the statement must be submitted along with the claim form.

(v) *Nonavailability Statement related to maternity care.* If a beneficiary receives services and supplies related to maternity care or the actual delivery without securing a required Nonavailability Statement, CHAMPUS benefits are not available for any costs related to that maternity care except in the event of an authentic medical emergency

NOTE According to section 8031 of the Department of Defense Appropriation Act for 1985, and effective for claims processed on or after October 12, 1984, a nonavailability statement is not required for payments that supplement primary coverage provided by other insurance plans or programs for inpatient care. Application of these provisions after September 30, 1985, will depend on the language of future appropriation acts.

(10) *Utilization review and quality assurance.* Before the extension of any CHAMPUS benefits under the Basic Program as outlined in this section, claims submitted for medical services and supplies rendered CHAMPUS beneficiaries are subject to review for quality of care and appropriate utilization. The Director, OCHAMPUS, or a designee, is responsible for utilization review and quality assurance and shall issue such generally accepted standards, norms, and criteria as are necessary to ensure compliance. Such utilization review and quality assurance standards, norms, and criteria shall include, but not be limited to, need for inpatient admission, length of inpatient stay, level of care, appropriateness of treatment, and level of institutional care required. Implementing instructions, procedures, and guidelines may provide for retrospective, concurrent, and prospective review, requiring both in-house and external review capability on the part of both CHAMPUS fiscal intermediaries and OCHAMPUS.

(11) *Preauthorization.* Because CHAMPUS benefits are limited for certain types of care, the beneficiary is required to obtain preauthorization from the Director, OCHAMPUS, or a designee, before the services are provided. The types of care for which preauthorization is required are identified in other parts of this Section.

(i) *Purpose of preauthorization.* Preauthorization is required for those types of services for which coverage is limited or for which the conditions for coverage are highly technical. In such cases, the likelihood that CHAMPUS benefits will not be available is high. To minimize the risk that beneficiaries will incur costs that CHAMPUS cannot cover, the beneficiary is expected to request preauthorization of the care before the services are received. If a beneficiary fails to obtain preauthorization before receiving the services, the Director, OCHAMPUS, or a designee, may extend CHAMPUS benefits if the services or supplies otherwise would qualify for benefits but for the failure to obtain preauthorization.

(ii) *Admissions to authorized institutions requiring preauthorization.* When the Director, OCHAMPUS, requires preauthorization to an inpatient facility, the request for preauthorization is processed by OCHAMPUS. If the beneficiary elects to proceed with an admission prior to receiving written preauthorization from OCHAMPUS, authorization may be requested subsequently. If the stay in the institution is determined to be appropriate under the provisions of this part, the Director, OCHAMPUS, or a designee, shall authorize benefits retroactively to the date of admission to the institution. If the stay is determined not to qualify under the provisions of this part, the Director, or a designee, shall deny benefits as of the date the care failed to meet the requirements for coverage.

(A) *Initial preauthorization: limited to 30 days.* The Director, OCHAMPUS, or a designee, shall limit the initial preauthorization to 30 days of inpatient care. At the end of this initial 30 days, the Director, OCHAMPUS, or a designee, shall review the care to determine whether it continues to be appropriate and to meet all requirements for coverage. The Director, OCHAMPUS, or designee, shall repeat this review every 30 days thereafter, or at such other time period as may be specified by the Director, OCHAMPUS, or a designee.

(B) *Approved treatment plan.* A request for preauthorization described in paragraph (a)(11) of this section, requires submission of a detailed treatment plan, in accordance with guidelines and procedures issued by the Director, OCHAMPUS.

(iii) *Other preauthorization requirements.* (A) The Director, OCHAMPUS, or a designee, shall respond to all requests for preauthorization in writing and shall send notification of approval or denial to the beneficiary.

(B) The Director, OCHAMPUS, or a designee, shall specify, in the approved authorization, the services and supplies the approval covers.

(C) An approved preauthorization is valid only for 90 days from the date of issuance. If the preauthorized services and supplies are not obtained or commenced within the 90-day period, a new preauthorization request is required.

(D) A preauthorization may set forth other special limits or requirements as indicated by the particular case or situation for which preauthorization is being issued.

(12) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to implement the intent of this part.

(b) *Institutional benefits*—(1) *General.* Benefits may be extended for those covered services and supplies described in paragraph (b) of this section that are provided by a hospital or other authorized institutional provider (as set forth in § 199.6 of this part), when such services and supplies are ordered, directed, or prescribed by a physician, and provided in accordance with good medical practice and established standards of quality. Such benefits are subject to applicable definitions, conditions, limitations, exceptions, or exclusions as otherwise may be set forth in this or other sections of this part.

(i) *Billing practices.* To be considered for benefits under paragraph (b) of this section, covered services and supplies must be provided and billed for by a hospital or other authorized institutional provider. Such billings must be fully itemized and sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. In the case of continuous care, claims shall be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor or, on a participating basis, directly by the facility on behalf of the beneficiary (refer to § 199.7).

(ii) *Successive inpatient admissions.* Successive inpatient admissions shall be deemed one inpatient confinement for the purpose of computing the active duty dependent's share of the inpatient institutional charges, provided not more than 60 days have elapsed between the successive admissions, except that successive inpatient admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions. For the purpose of applying benefits, successive admissions will be determined separately for maternity admissions and admissions related to an accidental injury (refer to paragraph (f) of this section).

(iii) *Related services and supplies.* Covered services and supplies must be rendered in connection with and related directly to a covered diagnosis or definitive set of symptoms requiring otherwise authorized medically necessary treatment.

(iv) *Inpatient, appropriate level required.* For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility is adequate, but is not available in the general locality, benefits may be continued in the higher level care facility, but CHAMPUS institutional benefit payments shall be limited to the allowable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS, or a designee. If it is determined that the institutional care can be provided reasonably in the home setting, no CHAMPUS institutional benefits are payable.

(v) *General or special education not covered.* Services and supplies related to the provision of either regular or special education generally are not covered. Such exclusion applies whether a separate charge is made for education or whether it is included as a part of an overall combined daily charge of an institution. In the latter instance, that portion of the overall combined daily charge related to education must be determined, based on the allowable costs of the educational component, and deleted from the institution's charges before CHAMPUS benefits can be extended. The only exception is when appropriate education is not available from or not payable by the cognizant public entity. Each case must be referred to the Director, OCHAMPUS, or a designee for review and a determination of the applicability of CHAMPUS benefits.

(2) *Covered hospital services and supplies.*—(i) *Room and board.* Includes special diets, laundry services, and other general housekeeping support services (inpatient only).

(ii) *General staff nursing services.*

(iii) *ICU.* Includes specialized units, such as for respiratory conditions, cardiac surgery, coronary care, burn care, or neurosurgery (inpatient only).

(iv) *Operating room, recovery room.* Operating room and recovery room, including other special treatment rooms and equipment, and hyperbaric chamber.

(v) *Drugs and medicines.* Includes sera, biologicals, and pharmaceutical preparations (including insulin) that are listed in the official formularies of the institution or facility at the time of use. (To be considered as an inpatient supply, drugs and medicines must be consumed during the specific period the beneficiary is a registered inpatient. Drugs and medicines prescribed for use outside the hospital, even though prescribed and obtained while still a registered inpatient, will be considered outpatient supplies and the provisions of paragraph (d) of this section will apply.)

(vi) *Durable medical equipment, medical supplies, and dressings.* Includes durable medical equipment, medical supplies essential to a surgical procedure (such as artificial heart valve and artificial ball and socket joint), sterile trays, casts, and orthopedic hardware. Use of durable medical equipment is restricted to an inpatient basis.

NOTE: If durable medical equipment is to be used on an outpatient basis or continued in outpatient status after use as an inpatient, benefits will be provided as set forth in paragraph (d) of this section and cost-sharing will be on an outpatient basis (refer to paragraph (a)(4) of this section).

(vii) *Diagnostic services.* Includes clinical laboratory examinations, x-ray examinations, pathological examinations, and machine tests that produce hard-copy results. Also includes CT scanning under certain limited conditions.

(viii) *Anesthesia.* Includes both the anesthetic agent and its administration.

(ix) *Blood.* Includes blood, plasma and its derivatives, including equipment and supplies, and its administration.

(x) *Radiation therapy.* Includes radioisotopes.

(xi) *Physical therapy.*

(xii) *Oxygen.* Includes equipment for its administration.

(xiii) *Intravenous injections.* Includes solution.

(xiv) *Shock therapy.*

(xv) *Chemotherapy.*

(xvi) *Renal and peritoneal dialysis.*

(xvii) *Psychological evaluation tests.* When required by the diagnosis.

(xviii) *Other medical services.* Includes such other medical services as may be authorized by the Director, OCHAMPUS, or a designee, provided they are related directly to the diagnosis or definitive set of symptoms and rendered by a member of the institution's medical or professional staff (either salaried or contractual) and billed for by the hospital.

(3) *Covered services and supplies provided by special medical treatment institutions or facilities, other than hospitals or RTCs*—(i) *Room and board.* Includes special diets, laundry services, and other general housekeeping support services (inpatient only).

(ii) *General staff nursing services.*

(iii) *Drugs and medicines.* Includes sera, biologicals, and pharmaceutical preparations (including insulin) that are listed in the official formularies of the institution or facility at the time of use. (To be considered as an inpatient supply, drugs and medicines must be consumed during the specific period the beneficiary is a registered inpatient. Drugs and medicines prescribed for use outside the authorized institutional provider, even though prescribed and obtained while still a registered inpatient, will be considered outpatient supplies and the provisions of paragraph (d) of this section will apply.).

(iv) *Durable medical equipment, medical supplies, and dressings.* Includes durable medical equipment, sterile trays, casts, orthopedic hardware and dressings. Use of durable medical equipment is restricted to an inpatent basis.

NOTE: If the durable medical equipment is to be used on an outpatient basis or continued in outpatient status after use as an inpatient, benefits will be provided as set forth in paragraph (d) of this section, and cost-sharing will be on an outpatient basis (refer to paragraph (a)(4) of this section).

(v) *Diagnostic services.* Includes clinical laboratory examinations, x-ray examinations, pathological examination, and machine tests that produce hard-copy results.

(vi) *Blood.* Includes blood, plasma and its derivatives, including equipment and supplies, and its administration.

(vii) *Physical therapy.*

(viii) *Oxygen.* Includes equipment for its administration.

(ix) *Intravenous injections.* Includes solution.

(x) *Shock therapy.*

(xi) *Chemotherapy.*

(xii) *Psychological evaluation tests.* When required by the diagnosis.

(xiii) *Renal and peritoneal dialysis.*

(xiv) *Other medical services.* Other medical services may be authorized by the Director, OCHAMPUS, or a designee, provided they are related directly to the diagnosis or definitive set of symptoms and rendered by a member of the institution's medical or professional staff (either salaried or contractual) and billed for by the authorized institutional provider of care.

(4) *Services and supplies provided by RTCs*—(i) *Room and board.* Includes use of residential facilities such as food service (including special diets), laundry services, supervised reasonable recreational and social activity services, and other general services as considered appropriate by the Director, OCHAMPUS, or a designee.

(ii) *Patient assessment.* Includes the assessment of each child or adolescent accepted by the RTC, including clinical consideration of each of his or her fundamental needs, that is, physical, psychological, chronological age, developmental level, family, educational, social, environmental, and recreational.

(iii) *Diagnostic services.* Includes clinical laboratory examinations, x-ray examinations, pathological examinations, and machine tests that produce hard-copy results.

(iv) *Psychological evaluation tests.*

(v) *Treatment of mental disorders.* Services and supplies that are medically or psychologically necessary to diagnose and treat the mental disorder for which the patient was admitted to the RTC. Covered services and requirements for qualifications of providers are as listed in paragraph (c)(3)(ix) of this section.

(vi) *Other necessary medical care.* Emergency medical services or other authorized medical care may be rendered by the RTC provided it is professionally capable of rendering such services and meets standards required by the Director, OCHAMPUS. It is intended, however, that CHAMPUS payments to an RTC should primarily cover those services and supplies directly related to the treatment of mental disorders that require residential care.

(5) *Extent of institutional benefits*—(i) *Inpatient room accommodations*—(A) *Semiprivate.* The allowable costs for room and board furnished an individual patient are payable for semiprivate accommodations in a hospital or other authorized institution, subject to appropriate cost-sharing provisions (refer to paragraph (f) of this section). A semiprivate accommodation is a room containing at least two beds. Therefore, if a room publicly is designated by the institution as a semiprivate accommodation and contains multiple beds, it qualifies as semiprivate for the purpose of CHAMPUS.

(B) *Private.* A room with one bed that is designated as a private room by the hospital or other authorized institutional provider. The allowable cost of a private room accommodation is covered only under the following conditions:

(*1*) When its use is required medically and when the attending physician certifies that a private room is necessary medically for the proper care and treatment of a patient; or

(*2*) When a patient's medical condition requires isolation; or

(*3*) When a patient (in need of immediate inpatient care but not requiring a private room) is admitted to a hospital or other authorized institution that has semiprivate accommodations, but at the time of admission, such accommodations are occupied; or

(*4*) When a patient is admitted to an acute care hospital (general or special) without semiprivate rooms.

(C) *Duration of private room stay.* The allowable cost of private accommodations is covered under the circumstances described in paragraph (b)(5)(i)(B) of this section until the patient's condition no longer requires the private room for medical reasons or medical isolation; or, in the case of the patient not requiring a private room, when a semiprivate accommodation becomes available; or, in the case of an acute care hospital (general or special) which does not have semiprivate rooms, for the duration of an otherwise covered inpatient stay.

(D) *Hospital (except an acute care hospital, general or special) or other authorized institutional provider without semiprivate accommodations.* When a beneficiary is admitted to a hospital (except an acute care hospital, general or special) or other institution that has no semiprivate accommodations, for any inpatient day when the patient qualifies for use of a private room (as set forth in paragraphs (b)(5)(i)(B) (*1*) and (*2*) of this section) the allowable cost of private accommodations is covered. For any inpatient day in such a hospital or other authorized institution when the patient does not require medically the private room, the allowable cost of semiprivate accommodations is covered, such allowable costs to be determined by the Director, OCHAMPUS, or a designee.

(ii) *General staff nursing services.* General staff nursing services cover all nursing care (other than that provided by private duty nurses) including, but not limited to, general duty nursing, emergency room nursing, recovery room nursing, intensive nursing care, and group nursing arrangements. Only nursing services provided by nursing personnel on the payroll of the hospital or other authorized institution are eligible under paragraph (b) of this section. If a nurse who is not on the payroll of the hospital or other authorized institution is called in specifically to care for a single patient (individual nursing) or more than one patient (group nursing), whether the patient is billed for the nursing services directly or through the hospital or other institution, such services constitute private duty (special) nursing services and are not eligible for benefits under this paragraph (the provisions of paragraph (c)(2)(xv) of this section would apply).

(iii) *ICU.* An ICU is a special segregated unit of a hospital in which patients are concentrated, by reason of serious illness, usually without regard to diagnosis. Special lifesaving techniques and equipment are available regularly and immediately within the unit, and patients are under continuous observation by a nursing staff specially trained and selected for the care of this type of patient. The unit is maintained on a continuing, rather than an intermittent or temporary, basis. It is not a postoperative recovery room or a postanesthesia room. In some large or highly specialized hospitals, the ICUs may be refined further for special purposes, such as for respiratory conditions, cardiac surgery, coronary care, burn care, or neurosurgery. For purposes of CHAMPUS, these specialized units would be considered ICUs if they otherwise conformed to the definition of an ICU.

(iv) *Treatment rooms.* Standard treatment rooms include emergency rooms, operating rooms, recovery rooms, special treatment rooms, and hyperbaric chambers and all related necessary medical staff and equipment. To be recognized for purposes of CHAMPUS, treatment rooms must be so designated and maintained by the hospital or other authorized institutions on a continuing basis. A treatment room set up on an intermittent or temporary basis would not be so recognized.

(v) *Drugs and medicines.* Drugs and medicines are included as a supply of a hospital or other authorized institution only under the following conditions:

(A) They represent a cost to the facility rendering treatment;

(B) They are furnished to a patient receiving treatment, and are related directly to that treatment, and

(C) They are ordinarily furnished by the facility for the care and treatment of inpatients.

(vi) *Durable medical equipment, medical supplies, and dressings.* Durable medical equipment, medical supplies, and dressings are included as a supply of a hospital or other authorized institution only under the following conditions:

(A) If ordinarily furnished by the facility for the care and treatment of patients; and

(B) If specifically related to, and in connection with, the condition for which the patient is being treated; and

(C) If ordinarily furnished to a patient for use in the hospital or other authorized institution (except in the case of a temporary or disposable item); and

(D) Use of durable medical equipment is limited to those items provided while the patient is an inpatient. If such equipment is provided for use on an outpatient basis, the provisions of paragraph (d) of this section apply.

(vii) *Transitional use items.* Under certain circumstances, a temporary or disposable item may be provided for use beyond an inpatient stay, when such item is necessary medically to permit or facilitate the patient's departure from the hospital or other authorized institution, or which may be required until such time as the patient can obtain a continuing supply; or it would be unreasonable or impossible from a medical standpoint to discontinue the patient's use of the item at the time of termination of his or her stay as an inpatient.

(viii) *Anesthetics and oxygen.* Anesthetics and oxygen and their administration are considered a service or supply if furnished by the hospital or other authorized institution, or by others under arrangements made by the facility under which the billing for such services is made through the facility.

(ix) *Inpatient mental health services.* Inpatient mental health services are those services furnished by institutional and professional providers for treatment of a nervous or mental disorder (as defined in § 199.2) to a patient admitted to a CHAMPUS-authorized acute care general hospital; a psychiatric hospital; or, unless otherwise exempted, a specialized treatment facility.

(A) *Benefits limited to 60 days of inpatient care.* CHAMPUS benefits for inpatient care are payable only so long as the inpatient level of care is medically or psychologically necessary and otherwise meets the requirements of this part. In any case in which CHAMPUS benefits are paid for inpatient mental health services, such benefits will end automatically when payment has been made for 60 days of covered inpatient mental health services in a calendar year. This benefit limit applies whether the 60 days of paid inpatient mental health services are continuous or intermittent or involve one or more admissions to the same or different inpatient facilities. This limit on inpatient mental health services does not apply to services provided under the provisions of § 199.5 of this part; services provided on less than a

24-hour-a-day basis; or services provided in an authorized residential treatment center that meets the requirements of paragraph (b)(4)(v) of § 199.6 of this part.

(B) *Director, OCHAMPUS, may grant additional coverage.* Upon written request by or on behalf of the beneficiary, the Director, OCHAMPUS, or a designee, taking into account the opinions of professional review, may grant coverage of inpatient mental health services in excess of 60 days in a calendar year when such services are found to be required because of extraordinary medical or psychological circumstances. Coverage in excess of 60 days may be granted if the Director, or a designee, determines that extraordinary medical or psychological circumstances exist based upon a written request documenting that:

(*1*) The patient is suffering from an acute mental disorder or an acute exacerbation of a chronic mental disorder that results in the patient being put at significant risk to self or of becoming a danger to others, *and* the patient requires a type, level, and intensity of otherwise authorized service that can only be provided in an acute care inpatient setting; or

(*2*) The patient has a serious medical condition apart from his or her psychiatric condition that requires a type, level, and intensity of service that can only be provided in an acute care inpatient setting and the person continues to need psychiatric care, but cannot obtain it on an outpatient basis because of his or her inpatient status. The medical condition and services provided must be otherwise covered under CHAMPUS.

(6) *Emergency inpatient hospital services.* In the case of a medical emergency, benefits can be extended for medically necessary inpatient services and supplies provided to a beneficiary by a hospital, including hospitals that do not meet CHAMPUS standards or comply with the provisions of title VI of the Civil Rights Act, or satisfy other conditions herein set forth. In a medical emergency, medically necessary inpatient services and supplies are those that are necessary to prevent the death or serious impairment of the health of the patient, and that, because of the threat to the life or health of the patient, necessitate, the use of the most accessible hospital available and equipped to furnish such services. The availability of benefits depends upon the following three separate findings and continues only as long as the emergency exists, as determined by medical review. If the case qualified as an emergency at the time of admission to an unauthorized institutional provider and the emergency subsequently is determined no longer to exist, benefits will be extended up through the date of notice to the beneficiary and provider that CHAMPUS benefits no longer are payable in that hospital.

(i) *Existence of medical emergency.* A determination that a medical emergency existed with regard to the patient's condition;

(ii) *Immediate admission required.* A determination that the condition causing the medical emergency required immediate admission to a hospital to provide the emergency care; and

(iii) *Closest hospital utilized.* A determination that diagnosis or treatment was received at the most accessible (closest) hospital available and equipped to furnish the medically necessary care.

(c) *Professional services benefit*—(1) *General.* Benefits may be extended for those covered services described in paragraph (c) of this section that are provided in accordance with good medical practice and established standards of quality by physicians or other authorized individual professional providers, as set forth in § 199.6 of this part. Such benefits are subject to all applicable definitions, conditions, exceptions, limitations, or exclusions as maybe otherwise set forth in this or other Sections of this part. Except as otherwise specifically authorized, to be considered for benefits under paragraph (c) of this section, the described services must be rendered by a physician, or prescribed, ordered, and referred medically by a physician to other authorized individual professional providers. Further, except under specifically defined circumstances, there should be an attending physician in any episode of care. (For example, certain services of a clinical psychologist are exempt from this requirement. For these exceptions, refer to § 199.6.)

(i) *Billing practices.* To be considered for benefits under paragraph (c) of this section, covered professional services must be performed personally by the physician or other authorized individual professional provider, who is other than a salaried or contractual staff member of a hospital or other authorized institution, and who ordinarily and customarily bills on a fee-for-service basis for professional services rendered. Such billings must be itemized fully and sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. For continuing professional care, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficary or sponsor, or directly by the physician or other authorized individual professional provider on behalf of a beneficiary (refer to § 199.7 of this part).

(ii) *Services must be related.* Covered professional services must be rendered in connection with and directly related to a covered diagnosis or definitive set of symptoms requiring medically necessary treatment.

(2) *Covered services of physicians and other authorized individual professional providers*—(i) *Surgery.* Surgery means operative procedures, including related preoperative and postoperative care; reduction of fractures and dislocations; injection and needling procedures of the joints; laser surgery of the eye; and the following procedures:

Bronchoscopy
Laryngoscopy
Thoracoscopy
Catheterization of the heart
Arteriograph thoracic lumbar
Esophagoscopy
Gastroscopy
Proctoscopy
Sigmoidoscopy
Peritoneoscopy
Cystoscopy
Colonscopy
Upper G.I. panendoscopy
Encephalograph
Myelography
Discography
Visualization of intracranial aneurysm by intracarotid injection of dye, with exposure of carotid artery, unilateral
Ventriculography
Insufflation of uterus and fallopian tubes for determination of tubal patency (Rubin's test of injection of radiopaque medium or for dilation)
Introduction of opaque media into the cranial arterial system, preliminary to cerebral arteriography, or into vertebral and subclavian systems
Intraspinal introduction of air preliminary to pneumoencephalography
Intraspinal introduction of opaque media preliminary to myelography
Intraventricular introduction of air preliminary to ventriculography

NOTE: The Director, OCHAMPUS, or a designee, shall determine such additional procedures that may fall within the intent of this definition of "surgery."

(ii) *Surgical assistance.*

(iii) *Inpatient medical services.*

(iv) *Outpatient medical services.*

(v) *Psychiatric services.*

(vi) *Consultation services.*

(vii) *Anesthesia services.*

(viii) *Radiation therapy services.*

(ix) *X-ray services.*

(x) *Laboratory and pathological services.*

(xi) *Physical medicine services or physiatry services.*

(xii) *Maternity care.*

(xiii) *Well-baby care.*

(xiv) *Other medical care.* Other medical care includes, but is not limited to, hemodialysis, inhalation therapy, shock therapy, and chemotherapy. The Director, OCHAMPUS, or a designee, shall determine those additional medical services for which benefits may be extended under this paragraph.

NOTE: A separate professional charge for the oral administration of approved antineoplastic drugs is not covered.

(xv) *Private duty (special) nursing services.*

(xvi) *Routine eye examinations.* Coverage for routine eye examinations is limited to dependents of active duty members, to one examination per calendar year per person, and to services rendered on or after October 1, 1984.

(3) *Extent of professional benefits.*—(i) *Multiple surgery.* In cases of multiple surgical procedures performed at

the same time, benefits shall be determined as follows:

(A) If such multiple surgical procedures are for related conditions (whether or not, as in the case of cutting procedures, such care is performed through the same surgical opening or by the same surgical approach), benefits shall be limited to that part of the surgical care for which the greatest amount is payable under the applicable reimbursement method (refer to paragraph (e) of § 199.6 of this part). For the purposes of CHAMPUS, all procedures performed through the same surgical approach shall be considered to be related conditions.

(B) If the multiple surgical procedures are for unrelated conditions, benefits shall be extended as follows:

(*1*) 100 percent of the CHAMPUS-determined allowable charge for the major surgical procedure; and

(*2*) 50 percent of the CHAMPUS-determined allowable charge for each of the other surgical procedures; or

(*3*) Except that, if the multiple surgical procedures involve the fingers or toes, benefits for the first surgical procedure shall be at 100 percent of the CHAMPUS-determined allowable charge; the second at 50 percent; and the third and subsequent at 25 percent.

(ii) *Different types of inpatient care, concurrent.* If a beneficiary receives inpatient medical care during the same admission in which he or she also receives surgical care or maternity care, the beneficiary shall be entitled to the greater of the CHAMPUS-determined allowable charge for either the inpatient medical care or surgical or maternity care received, as the case may be, but not both; except that the provisions of this paragraph (c)(3)(ii) shall not apply if such inpatient medical care is for a diagnosed condition requiring inpatient medical care not related to the condition for which surgical care or maternity care is received, and is received from a physician other than the one rendering the surgical care or maternity care.

NOTE: This provision is not meant to imply that when extra time and special effort are required due to postsurgical or postdelivery complications, the attending physician may not request special consideration for a higher than usual charge.

(iii) *Need for surgical assistance.* Surgical assistance is payable only if it is medically necessary, as determined by the primary surgeon, subject to utilization review. In order for benefits to be extended for surgical assistance service, the attending physician (surgeon) may be required to certify in writing to the nonavailability of a qualified intern, resident, or other house physician. When a claim is received for a surgical assistant involving the following circumstances, special review is required to ascertain whether the surgical assistance service meets the medical necessity and other requirements of paragraph (c) of this section.

(A) If the surgical assistance occurred in a hospital that has a residency program in a specialty appropriate to the surgery;

(B) If the surgery was performed by a team of surgeons;

(C) If there were multiple surgical assistants; or

(D) If the surgical assistant was a partner of or from the same group of practicing physicians as the attending surgeon.

(iv) *Aftercare following surgery.* Except for those diagnostic procedures classified as surgery in paragraph (c) of this section, and injection and needling procedures involving the joints, the benefit payments made for surgery (regardless of the setting in which it is rendered) include normal aftercare, whether the aftercare is billed for by the physician or other authorized individual professional provider on a global, all-inclusive basis, or billed for separately.

(v) *Cast and sutures, removal.* The benefit payments made for the application of a cast or of sutures normally covers the postoperative care including the removal of the cast or sutures. When the application is made in one geographical location and the removal of the cast or sutures must be done in another geographical location, a separate benefit payment may be provided for the removal. The intent of this provision is to provide a separate benefit only when it is impracticable for the beneficiary to use the services of the provider that applied the cast originally. Benefits are not available for the services of a second provider if those services reasonably could have been rendered by the individual professional provider who applied the cast or sutures initially.

(vi) *Inpatient care, concurrent.* Concurrent inpatient care by more than one individual professional provider is covered if required because of the severity and complexity of the beneficiary's condition or because the beneficiary has multiple conditions that require treatment by providers of different specialities. Any claim for concurrent care must be reviewed before extending benefits in order to ascertain the condition of the beneficiary at the time the concurrent care was rendered. In the absence of such determination, benefits are payable only for inpatient care rendered by the attending physician.

(vii) *Consultants who become the attending surgeon.* A consultation performed within 3 days of surgery by the attending physician is considered a preoperative examination. Preoperative examinations are an integral part of the surgery and a separate benefit is not payable for the consultation. If more than 3 days elapse between the consultation and surgery (performed by the same physician), benefits may be extended for the consultation, subject to review.

(viii) *Anesthesia administered by the attending physician.* A separate benefit is not payable for anesthesia administered by the attending physician (surgeon or obstetrician) or dentist, or by the surgical, obstetrical, or dental assistant.

(ix) *Treatment of mental disorders.* CHAMPUS benefits for the treatment of mental disorders are payable for beneficiaries who are outpatients or inpatients of CHAMPUS-authorized general or psychiatric hospitals, RTCs, or specialized treatment facilities, as authorized by the Director, OCHAMPUS, or a designee. All such services are subject to review for medical or psychological necessity and for quality of care.

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following professional services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists or clinical social workers; and marriage, family, and pastoral counselors, under a physician's supervision. No payment will be made for any service listed in this paragraph (c)(3)(ix)(A) rendered by an individual who does not meet the criteria of § 199.6 of this part for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

(*1*) *Individual psychotherapy, adult or child.* A covered individual psychotherapy session is no more than 60 minutes in length. An individual psychotherapy session of up to 120 minutes in length is payable for crisis intervention.

(*2*) *Group psychotherapy.* A covered group psychotherapy session is no more than 90 minutes in length.

(*3*) *Family or conjoint psychotherapy.* A covered family or conjoint psychotherapy session is no more than 90 minutes in length. A family or conjoint psychotherapy session of up to 180 minutes in length is payable for crisis intervention.

(*4*) *Psychoanalysis.* Psychoanalysis is covered subject to specific review for medical or psychological necessity and appropriateness by the Director, OCHAMPUS, or a designee.

(*5*) *Psychological testing and assessment.*

(*6*) *Administration of psychotropic drugs.* When prescribed by an authorized provider qualified by licensure to prescribe drugs.

(*7*) *Electroconvulsive treatment.* When provided in accordance with guidelines issued by the Director, OCHAMPUS.

(*8*) *Collateral visits.* Covered collateral visits are those that are medically or psychologically necessary for the treatment of the patient and, as such, are considered as a psychotherapy session for purposes of paragraph (e)(3)(ix)(B) of this section.

(B) *Limitations and review requirements*—(*1*) *Outpatient psychotherapy.* Outpatient psychotherapy generally is limited to a maximum of two psychotherapy sessions per week, in any combination of individual, family, conjoint, collateral, or group sessions. Before benefits can be extended for more than two outpatient psychotherapy sessions per week, professional review of the medical or psychological necessity for and appropriateness of the more intensive therapy is required.

(*2*) *Inpatient psychotherapy.* Coverage of inpatient psychotherapy is based on the medical or psychological necessity for the services identified in the patient's treatment plan. As a general rule, up to five psychotherapy sessions per week are considered appropriate. Additional sessions per week or more than one type of psychotherapy session performed on the same day (for example, an individual psychotherapy session and a family psychotherapy session on the same day) could be considered for coverage, depending on the medical or psychological necessity for the services. Benefits for inpatient psychotherapy will end automatically when the patient has received 60 days of covered inpatient mental health services in a calendar year, unless additional coverage is granted by the Director, OCHAMPUS. The Director, OCHAMPUS, shall issue specific guidelines for reviewing the medical and psychological necessity for and the quality of inpatient psychotherapy.

(C) *Covered ancillary therapies.* Includes art, music, dance, occupational, and other designated ancillary therapies, when included by the attending provider in an approved inpatient or outpatient treatment plan.

(D) *Review of claims for treatment of mental disorder.* The Director, OCHAMPUS, shall establish and maintain procedures for review, including professional review, of the services provided for the treatment of mental disorders.

(x) *Physical and occupational therapy*—(A) *Physical therapy.* To be covered, physical therapy must be related to a covered medical condition. If performed by other than a physician, a physician shall refer the patient for treatment and physician shall supervise the physical therapy. Generally, coverage of outpatient physical therapy is limited to a 60-day period, at up to two physical therapy sessions per week. Physical therapy beyond this length or frequency requires documentation of the medical necessity for the therapy and the anticipated results of the therapy. General exercise programs are not covered, even if recommended by a physician and conducted by qualified personnel. Passive exercises and range of motion exercises are not covered except when prescribed by a physician as an integral part of a comprehensive program of physical therapy.

(B) *Occupational therapy.* To be covered, occupational therapy must be related to a covered medical condition and must be directed to assisting the patient to overcome or compensate for disability resulting from illness, injury, or the effects of treatment of a covered condition. If performed by other than a physician, a physician shall prescribe the treatment and a physician shall supervise the occupational therapy. The occupational therapist providing the therapy shall be an employee of a CHAMPUS-authorized institutional provider and the services must be rendered in connection with CHAMPUS authorized care. Only those occupational therapy services that are rendered as part of an organized inpatient or outpatient rehabilitation program are covered. Occupational therapists are not considered CHAMPUS-authorized providers in their own right and may not submit bills on a fee-for-service basis. The employing institutional provider shall bill for the services of the occupational therapist.

(xi) *Maternity care, cost-sharing.* Notwithstanding any other provisions of this section, except paragraph (d)(3)(v) of this section, all otherwise covered services and supplies related to a maternity case shall be cost shared on the basis of the status or intended status of the maternity patient at the time of delivery (or other termination of the pregnancy).

(A) If the beneficiary plans that the delivery will be on an inpatient basis, all covered services and supplies directly related to the maternity care shall be cost-shared as inpatient services, including the pre- and post-natal care.

(B) If the beneficiary plans that the delivery will be on an outpatient basis, all covered services and supplies directly related to the maternity care shall be cost-shared as outpatient services, including the delivery itself.

(C) When a patient plans an inpatient delivery, but delivers or otherwise terminates the pregnancy at home or enroute to the hospital or other authorized institution, benefits will be extended as if the pregnancy had terminated on an inpatient basis.

(D) When a patient plans an outpatient (home) delivery, but delivers or otherwise terminates in an inpatient setting, all covered services or supplies directly related to the maternity shall be cost-shared on an inpatient basis, providing that a Nonavailability Statement (DD Form 1251), if required, has been obtained. In the absence of a required nonavailability statement, no benefits are payable.

(E) If a beneficiary obtains a nonavailability statement and receives any part of her prenatal care from a civilian provider, then moves to another geographic location and later delivers in a Uniformed Services hospital, the prenatal care received from the civilian source shall be cost-shared on an inpatient basis, inasmuch as it was related to an inpatient delivery.

(F) In maternity cases when complications arise during the term of the pregnancy (refer to paragraph (c)(3)(xii) of this section that require active medical treatment, otherwise covered medical services and supplies directly related to the complication of pregnancy will be cost-shared on the same basis as the related maternity care. This special cost-sharing provision is limited to a period not to exceed 6 weeks following termination of the pregnancy, at which time the regular cost-sharing rules apply (refer to paragraph (f) of this section).

(G) Other special situations that may arise requiring a determination of whether or not the maternity case should be cost-shared on an inpatient or outpatient basis shall be referred to the Director, OCHAMPUS, or a designee, who shall make such determinations consistent with paragraph (c)(3)(xi) of this section.

(xii) *Complications of pregnancy.* For the purposes of CHAMPUS, the following have been determined to be complications of pregnancy when commencing or exacerbating during the term of the pregnancy.

(A) Cesarean delivery, hysterotomy;

(B) Pregnancy terminating before expiration of 26 weeks, except a voluntary abortion.

(C) False labor or threatened miscarriage.

(D) Nephritis or pyelitis of pregnancy.

(E) Hyperemesis gravidarum.

(F) Toxemia.

(G) Aggravation of a heart condition or diabetes.

(H) Premature rupture of membrane.

(I) Ectopic pregnancy.

(J) Hemorrhage.

(K) Other conditions as may be determined by the Director, OCHAMPUS, or a designee.

NOTE: Postpartum psychosis (as its name implies), does not occur during the term of the pregnancy and, therefore, for the purposes of CHAMPUS does not qualify as a complication of pregnancy.

NOTE: The special maternity cost-sharing rules set forth in paragraphs (c)(3) (xi) and (xii) of this section also shall be applied when appropriate to services or supplies set forth under other paragraphs of this section, except for paragraph (d)(3)(v) of this section.

(xiii) *Well-baby care.* Benefits routinely are payable for well-baby care from birth up to the child's second birthday.

(A) The following services are payable when rendered as a part of a specific well-baby care program and when rendered by the attending pediatrician, family physician, or a pediatric nurse practitioner:

(*1*) Newborn examination, PKU tests, and newborn circumcision.

(*2*) History, physical examination, discussion, and counseling.

(*3*) Vision, hearing, and dental screening.

(*4*) Developmental appraisal.

(*5*) Immunization (that is, DPT, polio, measles, mumps, and rubella).

(*6*) Tuberculin test, hematocrit or Hgb., and urinalysis.

(B) Additional services or visits required because of specific findings or because of the particular circumstance of the individual case are covered if medically necessary and otherwise authorized for benefits under CHAMPUS.

(xiv) *Private duty (special) nursing.* Benefits are available for the skilled nursing services rendered by a private duty (special) nurse to a beneficiary requiring intensive skilled nursing care that can only be provided with the technical proficiency and scientific skills of an R.N. The specific skilled nursing services being rendered are controlling, not the condition of the patient or the professional status of the private duty (special) nurse rendering the services.

(A) Inpatient private duty (special) nursing services are limited to those rendered to an inpatient in a hospital that does not have an ICU. In addition, under specified circumstances, private duty (special) nursing in the home setting also is covered.

(B) The private duty (special) nursing care must be ordered and certified to be medically necessary by the attending physician.

(C) The skilled nursing care must be rendered by a private duty (special) nurse who is neither a member of the immediate family nor is a member of the beneficiary's household.

(D) Private duty (special) nursing care does not, except incidentally, include providing services that provide or support primarily the essentials of daily living or acting as a companion or sitter.

(E) If the private duty (special) nursing care services being performed are primarily those that could be rendered by the average adult with minimal instruction or supervision, the services would not qualify as covered private duty (special) nursing services, regardless of whether performed by an R.N., regardless of whether or not ordered and certified to by the attending physician, and regardless of the condition of the patient.

(F) In order for such services to be considered for benefits, a private duty (special) nurse is required to maintain detailed daily nursing notes, whether the case involves inpatient nursing service or nursing services rendered in the home setting.

(G) Claims for continuing private duty (special) nursing care shall be submitted at least every 30 days. Each claim will be reviewed and the nursing care evaluated whether it continues to be appropriate and eligible for benefits.

(H) In most situations involving private duty (special) nursing care rendered in the home setting, benefits will be available only for a portion of the care, that is, providing benefits only for that time actually required to perform medically necessary skilled nursing services. If full-time private duty (special) nursing services are engaged, usually for convenience or to provide personal services to the patient, CHAMPUS benefits are payable only for that portion of the day during which skilled nursing services are rendered, but in no event is less than 1 hour of nursing care payable in any 24-hour period during which skilled nursing services are determined to have been rendered. Such situations often are better accommodated through the use of visiting nurses. This allows the personal services that are not coverable by CHAMPUS to be obtained at lesser cost from other than an R.N. Skilled nursing services provided by visiting nurses are covered under CHAMPUS.

NOTE: When the services of an R.N. are not available, benefits may be extended for the otherwise covered services of a L.P.N. or L.V.N.

(d) *Other benefits*—(*1*) *General.* Benefits may be extended for the allowable charge of those other covered services and supplies described in this paragraph (d), which are provided in accordance with good medical practice and established standards of quality by those other authorized providers described in § 199.6 of this part. Such benefits are subject to all applicable definitions, conditions, limitations, or exclusions as otherwise may be set forth in this or other Sections of this part. To be considered for benefits under this paragraph (d) the described services or supplies must be prescribed and ordered by a physician.

(2) *Billing practices.* To be considered for benefits under this paragraph (d), covered services and supplies must be provided and billed for by an authorized provider as set forth in § 199.6 of this part. Such billing must be itemized fully and described sufficiently to permit CHAMPUS to determine whether benefits are authorized by this part. Whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor or directly by the provider.

(3) *Other covered services and supplies*—(i) *Blood.* If whole blood or plasma (or its derivatives) are provided and billed for by an authorized institution in connection with covered treatment, benefits are extended as set forth in paragraph (b) of this section. If blood is billed for directly to a beneficiary, benefits may be extended under paragraph (d) in the same manner as a medical supply.

(ii) *Durable medical equipment*—(A) *Coverage criteria.* Durable medical equipment (DME) for the specific use of the beneficiary is covered, provided such equipment meets the following criteria:

(*1*) It must be medically necessary for the treatment of an illness or injury.

(*2*) It must improve the function of a malformed, diseased, or injured body part, or retard further deterioration of the patient's physical condition.

(*3*) It must be used primarily and customarily to serve a medical purpose, rather than being primarily for transportation, comfort, or convenience.

NOTE: A wheelchair or CHAMPUS-approved alternative is not considered transportation in the sense of paragraph (d)(3)(ii)(A)(*3*) of this section. It is qualified as DME under paragraph (d)(3)(ii)(A)(*2*) of this section, because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond the basic mobility provided by a wheelchair or CHAMPUS-approved alternative is considered to be primarily transportation.

(*4*) It must withstand repeated use and will be provided on a one-at-a-time basis only, based on the anticipated lifetime of the specific item of equipment.

(*5*) It must be other than spectacles, eyeglasses, contact lenses, other optical devices, hearing aids, or other communication devices.

(*6*) It cannot be beyond the medically appropriate level of performance and quality required under the circumstances (that is, nonluxury or nondeluxe). However, this criterion is not intended to preclude the special fitting of equipment to accommodate a particular disability, such as fitting a wheelchair for a one-armed patient.

(*7*) It cannot be for a patient in a facility that ordinarily can provide or provides such equipment.

(*8*) It is not available for loan from any local Uniformed Services medical treatment facility.

(*9*) The reasonable charge for the item must be more than $100.

(B) *Payment alternatives.* Generally, CHAMPUS reimbursement for DME will be limited to the method most cost advantageous to the Government. These methods can include rental, lease and purchase, and outright purchase. Factors to be considered in the reimbursement process include the reasonable charge for purchase of the equipment, the reasonable monthly rental charge for the equipment, the estimated duration of medical necessity for the use of the equipment, and the availability of rental equipment. In addition, the cost analysis must include a provision for the time value of money at the rate determined by the U.S. Department of the Treasury. Regardless of the method of reimbursement to be used, all equipment first must meet the coverage criteria in paragraph (d)(3)(ii)(A) of this section.

(iii) *Medical supplies and dressings (consumables).* Medical supplies and dressings (consumables) are those that do not withstand prolonged, repeated use. Such items must be related directly to an appropriate and verified covered medical condition of the specific beneficiary for whom the item was purchased and obtained from a medical supply company, a pharmacy, or authorized institutional provider. Examples of covered medical supplies and dressings are disposable syringes for a known diabetic, colostomy sets, irrigation sets, and elastic bandages. An external surgical garment specifically designed for use following a mastectomy is considered a medical supply item.

NOTE—Generally, the allowable charge of a medical supply item will be under $100. Any item over this amount must be reviewed to determine whether it would not qualify as a DME item. If it is, in fact, a medical supply item and does not represent an excessive charge, it can be considered for benefits under paragraph (d)(3)(iii) of this section.

(iv) *Oxygen.* Oxygen and equipment for its administration are covered. Benefits are limited to providing a tank unit at one location with oxygen limited to a 30-day supply at any one time. Repair and adjustment of CHAMPUS-purchased oxygen equipment also is covered.

(v) *Ambulance.* Civilian ambulance service, to, from, and between hospitals is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition. Ambulance service also is covered for transfers to a Uniformed Service Medical Treatment Facility (USMTF). For the purpose of CHAMPUS payment, ambulance service is always an outpatient service (including in connection with maternity care).

(A) Ambulance service is covered for emergency transfers from a beneficiary's place of residence, accident scene, or other location to a USMTF, and for transfer to a USMTF after treatment at, or admission to, a civilian hospital, if ordered by other than a representative of the USMTF.

(B) Ambulance service cannot be used instead of taxi service and is not payable when the patient's condition would have permitted use of regular private transportation; nor is it payable when transport or transfer of a patient is primarily for the purpose of having the patient nearer to home, family, friends, or personal physician. Except as described in paragraph (d)(3)(v)(A) of this section, transport must be to closest appropriate facility by the least costly means.

(C) Vehicles such as medicabs or ambicabs function primarily as public passenger conveyances transporting patients to and from their medical appointments. No actual medical care is provided to the patients in transit. These types of vehicles do not qualify for benefits for the purpose of CHAMPUS payment.

(D) Ambulance services by other than land vehicles (such as a boat or airplane) may be considered only when the pickup point is inaccessible by a land vehicle, or when great distance or other obstacles are involved in transporting the patient to the nearest hospital with appropriate facilities and the patient's medical condition warrants speedy admission or is such that transfer by other means is contraindicated.

(vi) *Prescription drugs and medicines.* Prescription drugs and medicines that by U.S. law require a physician's or dentist's prescription and that are ordered or prescribed by a physician or dentist (except that insulin is covered for a known diabetic, even though a prescription may not be required for its purchase) in connection with an otherwise covered condition or treatment, including Rh immune globulin.

(A) Drugs administered by a physician or other authorized individual professional provider as an integral part of a procedure covered under paragraph (b) or (c) of this section (such as chemotherapy) are not covered under this subparagraph inasmuch as the benefit for the institutional services or the professional services in connection with the procedure itself also includes the drug used.

(B) CHAMPUS benefits may not be extended for drugs not approved by the U.S. Food and Drug Administration for general use by humans (even though approved for testing with humans).

(vii) *Prosthetic devices.* The purchase of prosthetic devices is limited to artificial limbs and eyes, except those items that are inserted surgically into the body as an essential and in tegral part of an otherwise covered surgical procedure are not excluded.

NOTE: In order for CHAMPUS benefits to be extended, any surgical implant must be approved for use in humans by the U.S. Food and Drug Administration. Devices that are approved only for investigational use in humans are not payable.

(viii) *Orthopedic braces and appliances.* The purchase of leg braces (including attached shoes), arm braces, back braces, and neck braces is covered. Orthopedic shoes, arch supports, shoe inserts, and other supportive devices for the feet, including special-ordered, custom-made built-up shoes or regular shoes subsequently built up, are not covered.

(e) *Special benefit information*—(1) *General.* There are certain circumstances, conditions, or limitations that impact the extension of benefits and that require special emphasis and explanation. This paragraph (e) sets forth those benefits and limitations recognized to be in this category. The benefits and limitations herein described also are subject to all applicable definitions, conditions, limitations, exceptions, and exclusions as set forth in this or other sections of this part, except as otherwise may be provided specifically in this paragraph (e).

(2) *Abortion.* Benefits under the Basic Program are available for otherwise covered services and supplies provided in connection with abortion when legally performed in accordance with the applicable ruling of the U.S. Supreme Court in *Doe v. Bolton,* 410 U.S. 179 (1973), *Roe v. Wade,* 410 U.S. 113 (1973) and *Planned Parenthood of Missouri v. Danforth,* 428 U.S. 52 (1976).

NOTE: Covered abortion services are limited to medical services or supplies only and do not include abortion counseling or referral fees. Availability of benefits for abortion services will depend on the language of future legislation, such as the annual DoD and DHHS appropriation act. The Director, OCHAMPUS, or a designee, shall issue guidelines describing the policy on abortion benefits.

(3) *Family planning.* The scope of the CHAMPUS family planning benefit is as follows:

(i) *Birth control (such as contraception)*—(A) *Benefits provided.* Benefits are available for services and supplies related to preventing conception, including the following:

(*1*) Surgical inserting, removal, or replacement of intrauterine devices.

(*2*) Measurement for, and purchase of, contraceptive diaphragms (and later remeasurement and replacement).

(*3*) Prescription oral contraceptives.

(*4*) Surgical sterilization (either male or female).

(B) *Exclusions.* The family planning benefit does not include the following:

(*1*) Prophylactics (condoms).

(*2*) Spermicidal foams, jellies, and sprays not requiring a prescription.

(*3*) Artificial insemination, including any costs related to donors or semen banks.

(*4*) Reversal of a surgical sterilization procedure (male or female).

(ii) *Genetic testing.* Genetic testing essentially is preventive rather than related to active medical treatment of an illness or injury. However, under the family planning benefit, genetic testing is covered when performed in certain high risk situations. For the purpose of CHAMPUS, genetic testing includes to detect developmental abnormalities as well as purely genetic defects.

(A) *Benefits provided.* Benefits may be extended for genetic testing performed on a pregnant beneficiary under the following prescribed circumstances. The tests must be appropriate to the specific risk situation and must meet one of the following criteria:

(*1*) The mother-to-be is 35 years old or older, or

(*2*) The mother- or father-to-be has had a previous child born with a congenital abnormality; or

(*3*) Either the mother- or father-to-be has a family history of congenital abnormalities; or

(*4*) The mother-to-be contracted rubella during the first trimester of the pregnancy; or

(*5*) Such other specific situations as may be determined by the Director, OCHAMPUS, or a designee, to fall within the intent of paragraph (e)(3)(ii) of this section.

(B) *Exclusions.* It is emphasized that routine or demand genetic testing is not covered. Further, genetic testing does not include the following:

(*1*) Tests performed to establish paternity of a child.

(*2*) Tests to determine the sex of an unborn child.

(4) *Treatment of alcoholism.* Emergency and inpatient hospital care for complications of alcoholism and detoxification are covered as for any other medical condition. Specific coverage for the treatment of alcoholism includes detoxification, rehabilitation, and outpatient care provided in authorized alcohol rehabilitation facilities.

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. In general, these services require no more than 7 days per episode. Any case of inpatient hospital care that continues beyond 7 days is subject to review to determine whether the longer stay is medically necessary for the patient's medical condition. Longer stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) *Authorized alcoholism treatment.* Only those services provided in an organized alcoholism treatment program, by an authorized freestanding or hospital-based alcohol rehabilitation facility are covered. Covered services consist of any or all of the services listed below. A qualified mental health provider (physicians, clinical psychologists, clinical social workers, psychiatric nurse specialists) (see paragraph (c)(3)(ix) of this section) shall prescribe the particular level of treatment. Each CHAMPUS beneficiary is entitled to three alcoholism treatment benefit periods in his or her lifetime. (A benefit period begins with the first date of covered alcoholism treatment and ends 365 days later, regardless of the total services actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods. Emergency and inpatient hospital services (as described in paragraph (e)(4)(i) of this section) do not constitute alcoholism treatment for purposes of establishing the beginning of a benefit period.)

(A) *Rehabilitative care.* Rehabilitative care in an authorized alcohol rehabilitation facility, whether freestanding or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage is limited to no more than 21 days of rehabilitative care in a benefit period. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, up to 7 days of detoxification services are covered in addition to the rehabilitative care. The medical necessity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

(B) *Outpatient care.* Outpatient treatment provided by an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is covered for up to 60 visits in a benefit period.

(C) *Family therapy.* Family therapy provided by an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is covered for up to 15 visits in a benefit period.

(iii) *Exclusions*—(A) *Aversion therapy.* The programmed use of physical measures, such as electric shock, alcohol, or other drugs as negative reinforcement (aversion therapy) is not covered, even if recommended by a physician.

(B) *Domiciliary settings.* Domiciliary facilities, generally referred to as halfway or quarterway houses, are not authorized providers and charges for services provided by these facilities are not covered.

(iv) *Confidentiality.* Release of any patient identifying information, including that required to adjudicate a claim, must comply with the provisions of section 523 of the Health Service Act (HSA), as amended (42 U.S.C. 290dd-3), which governs the release of medical and other information from the records of patients undergoing treatment of alcoholism. If the patient refuses to authorize the release of medical records which are, in the opinion of the Director, OCHAMPUS, or a designee, necessary to determine benefits on a claim for treatment of alcoholism, the claim will be denied.

(5) *Organ transplants.* Basic Program benefits are available for otherwise covered services or supplies in connection with an organ transplant procedure, provided such transplant procedure generally is in accordance with accepted professional medical standards and is not considered to be experimental or investigational.

(i) *Recipient costs.* CHAMPUS benefits are payable for recipient costs when the recipient of the transplant is a beneficiary, whether or not the donor is a beneficiary.

(ii) *Donor costs.* (A) Donor costs are payable when both the donor and recipient are CHAMPUS beneficiaries.

(B) Donor costs are payable when the donor is a CHAMPUS beneficiary but the recipient is not.

(C) Donor costs are payable when the donor is the sponsor and the recipient is a beneficiary. (In such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(D) Donor costs also are payable when the donor is neither a CHAMPUS beneficiary nor a sponsor, if the recipient is a CHAMPUS beneficiary. (Again, in such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(iii) *General limitations.* (A) If the donor is not a beneficiary, CHAMPUS benefits for donor costs are limited to those directly related to the transplant procedure itself and do not include any medical care costs related to other treatment of the donor, including complications.

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (Refer to § 199.3(e)(3)(vi) of this part.)

(C) Donor transportation costs are excluded whether or not the donor is a beneficiary.

(D) When the organ transplant is performed under a study, grant, or research program, no CHAMPUS benefits are payable for either recipient or donor cost.

(iv) *Kidney acquisition.* With specific reference to acquisition costs for kidneys, each hospital that performs kidney transplants is required for Medicare purposes to develop for each year separate standard acquisition costs for kidneys obtained from live donors and kidneys obtained from cadavers. The standard acquisition cost for cadaver kidneys is compiled by dividing the total cost of cadaver kidneys acquired by the number of transplants using cadaver kidneys. The standard acquisition cost for kidneys from live donors is compiled similarly using the total acquisition cost of kidneys from live donors and the number of transplants using kidneys from live donors. All recipients of cadaver kidneys are charged the same standard cadaver kidney acquisition cost and all recipients of kidneys from live donors are charged the same standard live donor acquisition cost. The appropriate hospital standard kidney acquisition costs (live donor or cadaver) required for Medicare in every instance must be used as the acquisition cost for purposes of providing CHAMPUS benefits.

(6) *Eyeglasses, spectacles, contact lenses, or other optical devices.* Eyeglasses, spectacles, contact lenses, or other optical devices are excluded under the Basic Program except under very limited and specific circumstances.

(i) *Exception to general exclusion.* Benefits for glasses and lenses may be extended only in connection with the following specified eye conditions and circumstances:

(A) Eyeglasses or lenses that perform the function of the human lens, lost as a result of intraocular surgery or ocular injury or congenital absence.

NOTE: Notwithstanding the general requirement for U.S. Food and Drug Administration approval of any surgical implant set forth in paragraph (d)(3)(vii) of this section, intraocular lenses are authorized under CHAMPUS if they are either approved for marketing by FDA or are subject to an investigational device exemption.

(B) "Pinhole" glasses prescribed for use after surgery for detached retina.

(C) Lenses prescribed as "treatment" instead of surgery for the following conditions:

(*1*) Contract lenses used for treatment of infantile glaucoma.

(*2*) Corneal or scleral lenses prescribed in connection with treatment of keratoconus.

(*3*) Scleral lenses prescribed to retain moisture when normal tearing is not present or is inadequate.

(*4*) Corneal or scleral lenses prescribed to reduce a corneal irregularity other than astigmatism.

(ii) *Limitations.* The specified benefits are limited further to one set of lenses related to one of the qualifying eye conditions set forth in paragraph (e)(6)(i) of this section. If there is a prescription change requiring a new set of lenses (but still related to the qualifying eye condition), benefits may be extended for a second set of lenses, subject to specific medical review.

(7) *Transsexualism or hermaphroditism.* All services and supplies directly or indirectly related to transsexualism (or such other conditions as gender dysphoria) or hermaphroditism are excluded under CHAMPUS. This exclusion includes, but is not limited to, psychotherapy, prescription drugs, and intersex surgery that may be provided in connection with transsexualism or hermaphroditism. There is only one very limited exception to this general exclusion, that is, notwithstanding the definition of congenital anomaly, CHAMPUS benefits may be extended for surgery performed on a child 10 years of age or under to correct sex gender confusion (that is, ambiguous genitalia).

(8) *Cosmetic, reconstructive, or plastic surgery.* For the purposes of CHAMPUS, cosmetic, reconstructive, or plastic surgery is surgery that can be expected primarily to improve physical appearance or that is performed primarily for psychological purposes or that restores form, but does not correct or improve materially a bodily function.

NOTE: If a surgical procedure primarily restores function, whether or not there is also a concomitant improvement in physical appearance, the surgical procedure does not fall within the provisions set forth in this paragraph (e)(8).

(i) *Limited benefits under CHAMPUS.* Benefits under the Basic Program generally are not available for cosmetic, reconstructive, or plastic surgery. However, under certain limited circumstances, benefits for otherwise covered services and supplies may be provided in connection with cosmetic, reconstructive, or plastic surgery as follows:

(A) Correction of a congenital anomaly; or

(B) Restoration of body form following an accidental injury; or

(C) Revision of disfiguring and extensive scars resulting from neoplastic surgery.

(D) Reconstructive breast surgery following a medically necessary mastectomy performed for the treatment of carcinoma, severe fibrocystic disease, other nonmalignant tumors or traumatic injuries.

(E) Generally, benefits are limited to those cosmetic, reconstructive, or plastic surgery procedures performed no later than December 31 of the year following the year in which the related accidentally injury or surgical trauma occurred, except for authorized postmastectomy breast reconstruction for which there is no time limitation between mastectomy and reconstruction. Also, special consideration for exception will be given to cases involving children who may require a growth period.

(ii) *General exclusions.* (A) For the purposes of CHAMPUS, dental congenital anomalies such as absent tooth buds or malocclusion specifically are excluded. Also excluded are any procedures related to transsexualism or hermaphroditism, except as provided in paragraph (e)(7) of the section.

(B) Cosmetic, reconstructive, or plastic surgery procedures performed primarily for psychological reasons or as a result of the aging process also are excluded.

(C) Procedures performed for elective correction of minor dermatological blemishes and marks or minor ana tomical anomalies also are excluded.

(D) In addition, whether or not they would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty, surgical insertion of prosthetic testicles, and the penile implant procedure specifically are excluded.

(iii) *Noncovered surgery, all related services and suppiies excluded.* When it is determined that a cosmetic, reconstructive, or plastic surgery procedure does not qualify for CHAMPUS benefits, all related services and supplies are excluded, including any institutional costs.

(iv) *Example of noncovered cosmetic, reconstructive, or plastic surgery procedures.* The following is a partial list of cosmetic, reconstructive, or plastic surgery procedures that do not qualify for benefits under CHAMPUS. This list is for example purposes only and is not to be construed as being all-inclusive.

(A) Any procedure performed for personal reasons to improve the appearance of an obvious feature or part of the body that would be considered by an average observer to be normal and acceptable for the patient's age or ethnic or racial background.

(B) Cosmetic, reconstructive, or plastic surgical procedures that are justified primarily on the basis of a psychological or psychiatric need.

(C) Augmentation mammoplasties, except for those performed as a part of postmastectomy breast reconstruction as specifically authorized in paragraph (e)(8)(i)(D) of this section.

(D) Face lifts and other procedures related to the aging process.

(E) Reduction mammoplasties (unless there is medical documentation of intractable pain, not amenable to other forms of treatment, resulting from large, pendulous breasts).

(F) Panniculectomy; body sculpture procedures.

(G) Repair of sagging eyelids (without demonstrated and medically documented significant impairment of vision).

(H) Rhinoplasties (without evidence of accidental injury occurring within the previous 6 months that resulted in significant obstruction of breathing).

(I) Chemical peeling for facial wrinkles.

(J) Dermabrasion of the face.

(K) Elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(L) Revision of scars resulting from surgery or a disease process, except disfiguring and extensive scars resulting from neoplastic surgery.

(M) Removal of tattoos.

(N) Hair transplants.

(O) Electrolysis.

(P) Any procedures related to transsexualism or hermaphroditism, except as provided in paragraph (e)(7) of this section.

(Q) Penile implant procedure.

(R) Insertion of prosthetic testicles.

(9) *Complications (unfortunate sequelae) resulting from noncovered initial surgery or treatment.* Benefits are available for otherwise covered services and supplies required in the treatment of complications resulting from a noncovered incident of treatment (such as nonadjunctive dental care, transsexual surgery, and cosmetic surgery) but only if the later complication represents a separate medical condition such as a systemic infection, cardiac arrest, and acute drug reaction. Benefits may not be extended for any later care or procedures related to the complication that essentially is similar to the initial noncovered care. Examples of complications similar to the initial episode of care (and thus not covered) would be repair of facial scarring resulting from dermabrasion for acne or repair of a prolapsed vagina in a biological male who had undergone transsexual surgery.

(10) *Dental.* CHAMPUS does not include a dental benefit. Under very limited circumstances, benefits are available for dental services and supplies when the dental services are adjunc-

tive to otherwise covered medical treatment.

(1) *Adjunctive dental care, limited.* Adjunctive dental care is limited to that dental care that is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition.

(A) Elimination of a nonlocal oral infection (such as cellulitis or osteitis) that clearly is exacerbating and directly affecting a medical condition currently under treatment is an example of adjunctive dental care.

(B) Another example of adjunctive dental care is when teeth and tooth fragments must be removed to treat and repair facial trauma resulting from an accidental injury.

NOTE: The test of whether or not dental trauma is covered is whether or not the trauma is solely dental trauma. Dental trauma must be related to, and be an integral part of, medical trauma in order to be covered as adjunctive dental care.

(ii) *General exclusions.* Generally, preventive, routine, restorative, prosthodontic, or emergency dental care is not covered by CHAMPUS.

(A) Dental care that essentially is preventive and (even if performed to prevent a potential medical condition) is not an integral part of the treatment of a medical (not dental) condition, does not qualify as adjunctive dental care for the purposes of CHAMPUS. An example is routine dental care provided a rheumatic heart patient as a "preventive" measure.

(B) Adjunctive dental care does not include dental services that involve only the teeth or their supporting structures, even if it is the result of an result of an accident. An example is the child who falls and breaks, chips, or loosens a tooth.

(C) Adjunctive dental care does not include restoration or periodontal splinting of teeth or dental prosthesis, whether permanent or temporary and whether required as a result of an accidental injury or whether injured, affected, or fractured during the medical or surgical management of a medical condition.

(D) Adjunctive dental care does not include treatment of periodontal disease or the consequence of periodontal disease; nor does it include such dental services as filling cavities or adding or modifying bridgework to assist in mastication whether or not related to gastrointestinal or hematopoietic diseases.

(E) All orthodontia specifically is excluded, except when directly related to and as an integral part of, surgical correction of a cleft palate congenital anomaly.

(iii) *Preauthorization required.* In order to be covered, adjunctive dental care requires preauthorization from the Director, OCHAMPUS, or a designee, in accordance with paragraph (a)(11) of this section. When adjunctive dental care involves a medical (not dental) emergency (such as facial injuries resulting from an accident), the requirement for preauthorization is waived. Such waiver, however, is limited to the essential adjunctive dental care related to the medical condition requiring the immediate emergency treatment. A complete explanation, with supporting medical documentation, must be submitted with claims for emergency adjunctive dental care.

(iv) *Covered oral surgery.* Notwithstanding the above limitations on dental care, there are certain oral surgical procedures that are performed by both physicians and dentists, and that are essentially medical rather than dental care. For the purposes of CHAMPUS, the following procedures, whether performed by a physician or dentist, are considered to be in this category and benefits may be extended for otherwise covered services and supplies without preauthorization.

(A) Excision of tumors and cysts of the jaws, cheeks, lips, tongue, and roof and floor of the mouth, when such conditions require a pathological (histological) examination.

(B) Surgical procedures required to correct accidental injuries of the jaws, cheeks, lips, tongue, and roof and floor of the mouth.

(C) Treatment of oral or facial cancer.

(D) Treatment of fractures of facial bones.

(E) External (extra-oral) incision and drainage of cellulitis.

(F) Surgery of accessory sinuses, salivary glands, or ducts.

(G) Reduction of dislocations and the excision of the temporomandibular joints, when surgery is a necessary part of the reduction.

(H) Any oral surgical procedure that falls within the cosmetic, reconstructive, or plastic surgery definition is subject to the limitations and requirements set forth in paragraph (e)(8) of this section.

NOTE: Preparation of the mouth for dentures is not a covered oral surgery procedure. Also excluded are the removal of unerupted or partially erupted, malposed, or impacted teeth, with or without the attached follicular or development tissues.

(v) *Inpatient hospital stay in connection with non-adjunctive, noncovered dental care.* Institutional benefits specified in paragraph (b) of this section may be extended for inpatient hospital stays related to noncovered, nonadjunctive dental care when such inpatient stay is medically necessary to safeguard the life of the patient from the effects of dentistry because of the existence of a specific and serious nondental organic impairment currenty under active treatment. (Hemophilia is an example of a condition that could be considered a serious nondental impairment.) Preauthorization by the Director, OCHAMPUS, or a designee, is required for such inpatient stays to be covered in the same manner as required for adjunctive dental care described in paragraph (e)(10)(iii) of this section. Regardless of whether or not the preauthorization request for the hospital admission is approved and thus qualifies for institutional benefits, the professional service related to the nonadjunctive dental care is not covered.

(11) *Drug abuse.* Under the Basic Program, benefits may be extended for medically necessary prescripion drugs required in the treatment of an illness or injury or in connection with maternity care (refer to paragraph (d) of this section). However, CHAMPUS benefits cannot be authorized to support of maintain an existing or potential drug abuse situation, whether or not the drugs (under other circumstances) are eligible for benefit consideration and whether or not obtained by legal means.

(i) *Limitations on who can prescribe drugs.* CHAMPUS benefits are not available for any drugs prescribed by a member of the beneficiary's family or by a nonfamily member residing in the same household with the beneficiary or sponsor.

(ii) *Drug maintenance programs excluded.* Drug maintenance programs when one addictive drug is substituted for another on a maintenance basis (such as methadone substituted for heroin) are not covered. This exclusion applies even in areas outside the United States where addictive drugs are dispensed legally by physicians on a maintenance dosage level.

(iii) *Kinds of prescription drugs that are monitored carefully by CHAMPUS for possible abuse situations.* (A) *Narcotics.* Examples are Morphine and Demerol.

(B) *Nonnarcotic analgesics.* Examples are Talwin and Darvon.

(C) *Tranquilizers.* Examples are Valium, Librium, and Meprobamate.

(D) *Barbiturates.* Examples are Seconal and Nembuttal.

(E) *Nonbarbituate hypnotics.* Examples are Doriden and Chloral Hydrate.

(F) *Stimulants.* Examples are amphetamines.

(iv) *CHAMPUS fiscal intermediary responsibilities.* CHAMPUS fiscal intermediaries are responsible for implementing utilization control and quality assurance procedures designed to identify possible drug abuse situations. The CHAMPUS fiscal intermediary is directed to screen all drug claims for potential overutilization and irrational prescribing of drugs, and to subject any such cases to extensive review to establish the necessity for the drugs and their appropriateness on the basis of diagnosis or definitive symptoms.

(A) When a possible drug abuse situation is identified, all claims for drugs for that specific beneficiary or provider will be suspended pending the results of a review.

(B) If the review determines that a drug abuse situation does in fact exist, all drug claims held in suspense will be denied.

(C) If the record indicates previously paid drug benefits, the prior claims for that beneficiary or provider will be reopened and the circumstances involved reviewed to determine whether or not drug abuse also existed at the time the earlier claims were adjudicated. If drug abuse is later ascertained, benefit payments made previously will be considered to have been extended in error and the amounts so paid recouped.

(D) Inpatient stays primarily for the purpose of obtaining drugs and any other services and supplies related to drug abuse also are excluded.

(v) *Unethical or illegal provider practices related to drugs.* Any such investigation into a possible drug abuse that uncovers unethical or illegal drug dispensing practices on the part of an institution, a pharmacy, or physician will be referred to the professional or investigative agency having jurisdiction. CHAMPUS fiscal intermediaries are directed to withhold payment of all CHAMPUS claims for services and supplies rendered by a provider under active investigation for possible unethical or illegal drug dispensing activities.

(vi) *Detoxification.* The above monitoring and control of drug abuse situations shall in no way be construed to deny otherwise covered medical services and supplies related to drug detoxification (including newborn, addicted infants) when medical supervision is required.

(12) *Custodial care.* The statute under which CHAMPUS operates specifically excludes custodial care. Many beneficiaries and sponsors misunderstand what is meant by custodial care, assuming that because custodial care is not covered, it implies the custodial care is not necessary. This is not the case; it only means the care being provided is not a type of care for which CHAMPUS benefits can be extended.

(i) *Kinds of conditions that can result in custodial care.* There is no absolute rule that can be applied. With most conditions, there is a period of active treatment before custodial care, some much more prolonged than others. Examples of potential custodial care cases may be a spinal cord injury resulting in extensive paralysis, a severe cerebral vascular accident, multiple sclerosis in its latter stages, or presenile and senile dementia. These conditions do not result necessarily in custodial care but are indicative of the types of conditions that sometimes do. It is not the condition itself that is controlling, but whether the care being rendered falls within the definition of custodial care (refer to § 199.2 of this part for the definition of "custodial care").

(ii) *Benefits available in connection with a custodial care case.* CHAMPUS benefits are not available for services or supplies related to a custodial care case (including the supervisory physician's care), with the following specific exceptions:

(A) *Prescription drugs and medicines and medical supplies for their administration.* Benefits are payable for otherwise covered prescription drugs and medicines, as well as medical supplies that are necessary for their administration, even if prescribed primarily for the purpose of making the person receiving custodial care manageable in the custodial environment.

(B) *Nursing services, limited.* Recognizing that even though the care being received is determined primarily to be custodial, an occasional specific skilled nursing service may be required. When it is determined such skilled nursing services are needed, benefits may be extended for 1 hour of nursing care per day.

(C) *Payment for prescription drugs, medical supplies for their administration, and limited skilled nursing services does not affect custodial care determination.* The fact that CHAMPUS extends benefits for prescription drugs, medical supplies for their administration, and limited skilled nursing services in no way affects the custodial care determination if the case otherwise falls within the definition of custodial care.

(iii) *Beneficiary receiving custodial care, admission to a hospital.* CHAMPUS benefits may be extended for otherwise covered services or supplies directly related to a medically necessary admission to an acute care general or special hospital, under the following circumstances:

(A) *Presence of another condition.* When a beneficiary receiving custodial care requires hospitalization for the treatment of a condition other than the condition for which he or she is receiving custodial care (an example is a broken leg as a result of a fall); or

(B) *Acute exacerbation of the condition for which custodial care is being received.* When there is an acute exacerbation of the condition for which custodial care is being received that requires active inpatient treatment that otherwise is covered.

(iv) *Reasonable care for which benefits were authorized or reimbursed before June 1, 1977.* It is recognized that care for which benefits were authorized or reimbursed before the implementation date of DoD 6010.8-R may be excluded under the custodial care limitations set forth in the Regulation. Therefore, an exception to the custodial care limitations set forth in this part exists whereby reasonable care for which benefits authorized or reimbursed under the Basic Program before June 1, 1977, shall continue to be authorized even though the care would be excluded as a benefit under the custodial care limitations of the DoD 6010.8-R. Continuation of CHAMPUS benefits in such cases is limited as follows:

(A) *Initial authorization or reimbursement before June 1, 1977.* The initial CHAMPUS authorization or reimbursement for the care occurred before June 1, 1977; and,

(B) *Continued care.* The care has been continuous since the initial CHAMPUS authorization or reimbursement; and.

(C) *Reasonable care.* The care is reasonable. CHAMPUS benefits shall be continued for reasonable care up to the same level of benefits and for the same period of eligibility authorized or reimbursed before June 1, 1977. Care that is excessive or otherwise unreasonable will be reduced or eliminated from the continued care authorized under this exception.

(13) *Domiciliary care.* The statute under which CHAMPUS operates also specifically excludes domiciliary care (refer to § 199.2 of this part for the definition of "Domiciliary Care").

(i) *Examples of domiciliary care situations.* The following are examples of domiciliary care for which CHAMPUS benefits are not payable.

(A) *Home care is not available.* Institutionalization primarily because parents work, or extension of a hospital stay beyond what is medically necessary because the patient lives alone, are examples of domiciliary care provided because there is no other family member or other person available in the home.

(B) *Home care is not suitable.* Institutionalization of a child because a parent (or parents) is an alcoholic who is not responsible enough to care for the child, or because someone in the home has a contagious disease, are examples of domiciliary care being provided because the home setting is unsuitable.

(C) *Family unwilling to care for a person in the home.* A child who is difficult to manage may be placed in an institution, not because institutional care is medically necessary, but because the family does not want to handle him or her in the home. Such institutionalization would represent domiciliary care, that is, the family being unwilling to assume responsibility for the child.

(ii) *Benefits available in connection with a domiciliary care case.* Should the beneficiary receive otherwise covered medical services or supplies while also being in a domiciliary care situation, CHAMPUS benefits are payable for those medical services or supplies, or both, in the same manner as though the beneficiary resided in his or her own home. Such benefits would be cost-shared as though rendered to an outpatient.

(iii) *General exclusion.* Domiciliary care is institutionalization essentially to provide a substitute home—not because it is medically necessary for the beneficiary to be in the institution (although there may be conditions present that have contributed to the fact that domiciliary care is being rendered). CHAMPUS benefits are not payable for any costs or charges related to the provision of domiciliary care. While a substitute home or assistance may be necessary for the beneficiary, domiciliary care does not represent the kind of care for which CHAMPUS benefits can be provided.

(14) *CT scanning*—(i) *Approved CT scan services.* Benefits may be extended for medically necessary CT scans of the head or other anatomical regions of the body when all of the following conditions are met:

(A) The patient is referred for the diagnostic procedure by a physician.

(B) The CT scan procedure is consistent with the preliminary diagnosis or symptoms.

(C) Other noninvasive and less costly means of diagnosis have been attempted or are not appropriate.

(D) The CT scan equipment is licensed or registered by the appropriate state agency responsible for licensing or registering medical equipment that emits ionizing radiation.

(E) The CT scan equipment is operated under the general supervision and direction of a physician.

(F) The results of the CT scan diagnostic procedure are interpreted by a physician.

(ii) *Review guidelines and criteria.* The Director, OCHAMPUS, or a designee, will issue specific guidelines and criteria for CHAMPUS coverage of medically necessary head and body part CT scans.

(15) *Morbid obesity.* The CHAMPUS morbid obesity benefit is limited to the gastric bypass, gastric stapling, or gastroplasty method.

(i) *Conditions for coverage.* Payment may be extended for the gastric bypass, gastric stapling, or gastroplasty method only when one of the following conditions is met:

(A) The patient is 100 pounds over the ideal weight for height and bone structure and has an associated severe medical condition. These associated medical conditions are diabetes mellitus, hypertension, cholecystitis, narcolepsy, pickwickian syndrome (and other severe respiratory disease), hypothalmic disorders, and severe arthritis of the weight-bearing joints.

(B) The patient is 200 percent or more of the ideal weight for height and bone structure. An associated medical condition is not required for this category.

(C) The patient has had an intestinal bypass or other surgery for obesity and, because of complications, requires a second surgery (a takedown). The surgeon in many cases, will do a gastric bypass, gastric stapling, or gastroplasty to help the patient avoid regaining the weight that was lost. In this situation, payment is authorized even though the patient's condition technically may not meet the definition of morbid obesity because of the weight that was already lost following the initial surgery.

(ii) *Exclusions*—(A) CHAMPUS payment may not be made for nonsurgical treatment of obesity or morbid obesity, for dietary control, or weight reduction.

(B) CHAMPUS payment may not be made for surgical procedures other than the gastric bypass, gastric stapling, or gastroplasty, even if morbid obesity is present.

(f) *Beneficiary or sponsor liability*—(1) *General.* As stated in the introductory paragraph to this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of active duty members than for other classes of beneficiaries.

(2) *Dependents of active duty members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of active duty members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* A CHAMPUS beneficiary or sponsor is responsible for the payment of the first $50 of the CHAMPUS-determined allowable costs or charges for otherwise covered outpatient services or supplies provided in any one fiscal year. However, when such outpatient services are provided to more than one beneficiary member of a family during the same fiscal year, the aggregate outpatient deductible amount paid by any two or more beneficiary members of the family who submit claims may not exceed $100 during any fiscal year.

(A) In any one fiscal year if only one beneficiary member of a family files a claim (regardless of the number of beneficiary members actually in the family), that beneficiary member is required only to satisfy a $50 annual fiscal year deductible for outpatient services or supplies as described in paragraph (f)(2)(i) of this section.

(B) In any one fiscal year if two or more beneficiary members of a family file claims, the total amount of which is less than $100 but none of the beneficiary members submit a claim for over $50 dollars, no CHAMPUS benefits are payable for otherwise covered outpatient services or supplies provided such beneficiary members during that particular fiscal year.

(C) For any family the outpatient deductible amounts will be applied sequentially as the CHAMPUS claims are submitted.

(D) If the fiscal year outpatient deductible has been met by a beneficiary ($50) or a family ($100 aggregate) through the submission of a claim or claims to a CHAMPUS fiscal intermediary in another geographic location from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable beneficiary or family fiscal year deductible was met. Such deductible certificate must be attached to the current class being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second beneficiary or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in this paragraph (f)(2)(i)(D), is supplied to the CHAMPUS fiscal intermediary applying the second deductible (refer to paragraph (a) of § 199.7 of this part).

(ii) *Inpatient cost-sharing.* Dependents of active duty members of the Uniformed Services or their sponsors are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of this part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

NOTE: The Secretary of Defense (after consulting with the Secretary of Health and Human Services and the Secretary of Transportation) prescribes the fair charges for inpatient hospital care provided through Uniformed Services medical facilities. This determination is made each fiscal year.

(A) *Inpatient cost-sharing payable with each separate inpatient admission.* A separate cost-sharing amount (as described in paragraph (f)(2) of this section) is payable for each inpatient admission to a hospital or other authorized institution, regardless of the purpose of the admission (such as medical or surgical), regardless of the number of times the beneficiary is admitted, and regardless of whether or not the inpatient admissions are for the same or related conditions; except that successive inpatient admissions shall be deemed one inpatient confinement for the purpose of computing the inpatient cost-share payable, provided not more than 60 days have elapsed between the successive admissions. However notwithstanding this provision, all admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions (refer to paragraph (b) of this section).

(B) *Multiple family inpatient admissions.* A separate cost-sharing amount is payable for each inpatient admission, regardless of whether or not two or more beneficiary members of a family are admitted at the same time or from the same cause (such as an accident). A separate beneficiary inpatient cost-sharing amount must be applied for each separate admission on each beneficiary member of the family.

(C) *Newborn patient in his or her own right.* When a newborn infant remains as an inpatient in his or her own right (usually after the mother is discharged), the newborn child becomes the beneficiary and patient and the extended inpatient stay becomes a separate inpatient admission. In such a situation, a new, separate inpatient cost-sharing amount is applied. If a multiple birth is involved (such as twins or triplets) and two or more newborn infants become patients in their own right, a separate inpatient cost-sharing amount must be applied to the inpatient stay for each newborn child who has remained as an inpatient in his or her own right.

(iii) *Outpatient cost-sharing.* Dependents of active duty members of the Uniformed Services or their sponsors are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(iv) *Ambulatory surgery.* Notwithstanding the above provisions pertaining to outpatient cost-sharing, dependents of active duty members of the Uniformed Services or their sponsors are responsible for payment of $25 for surgical care that is authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

(3) *Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees.* CHAMPUS beneficiary liability set forth for retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is identical to the annual fiscal year outpatient deductible applicable to dependents of active duty members (refer to paragraph (f)(2)(i) of this section).

(ii) *Inpatient cost-sharing.* Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees are responsible for the payment of 25 percent of the CHAMPUS-determined allowable costs or charges for otherwise covered services or supplies provided on an inpatient basis by an authorized provider.

(iii) *Outpatient cost-sharing.* Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(4) *Former spouses.* CHAMPUS beneficiary liability set forth for former spouses eligible under the provisions of paragraph (b)(2)(ii) of § 199.3 is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* An eligible former spouse is responsible for the payment of the first $50 of the CHAMPUS-determined reasonable costs or charges for otherwise covered outpatient services or supplies provided in any one fiscal year. The former spouse cannot contribute to, nor benefit from, any family deductible of the member or former member to whom the former spouse was married or of any CHAMPUS-eligible children.

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for the payment of 25 percent of the CHAMPUS-determined reasonable costs or charges for otherwise covered services or supplies provided on an inpatient basis by an authorized provider.

(iii) *Outpatient cost-sharing.* Eligible former spouses are responsible for payment of 25 percent of the CHAMPUS-determined reasonable costs or charges beyond the annual fiscal year deductible amount for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(5) *Amounts over CHAMPUS-determined allowable costs or charges.* It is the responsibility of the CHAMPUS fiscal intermediary to determine allowable costs for services and supplies provided by hospitals and other institutions and allowable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined allowable costs or charges are made in accordance with the provisions of paragraph (e) of § 199.6. All CHAMPUS benefits, including calculation of the CHAMPUS or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined allowable costs or charges. The effect on the beneficiary when the billed cost or charge is over the CHAMPUS-determined allowable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary or submitted directly by the beneficiary on a nonparticipating basis. This provision applies to all classes of CHAMPUS beneficiaries.

NOTE: When the provider "forgives" or "waives" any beneficiary liability, such as amounts applicable to the annual fiscal year deductible for outpatient services or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this Section, the CHAMPUS-determined allowable charge or cost allowable (whether payable to the CHAMPUS beneficiary or sponsor or to a participating provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, an authorized provider has the option of participating on a claim-by-claim basis. If a provider elects to participate, the provider signs and indicates participation in the appropriate space on the applicable CHAMPUS claim form and submits it to the appropriate CHAMPUS fiscal intermediary. In the case of an institution or medical supplier, the claim must be signed by an official having such authority. This signature certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and further has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as full payment for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized medical services or supplies.

(ii) *Nonparticipating providers.* Nonparticipating providers are those providers who do not agree on the CHAMPUS claim form to participate and thereby do not agree to accept the CHAMPUS-determined allowable costs or charges as the full charge. For otherwise covered services and supplies provided by such nonparticipating CHAMPUS providers, payment is made directly to the beneficiary or sponsor and the beneficiary is liable under applicable law for any amounts over the CHAMPUS-determined allowable costs or charges. CHAMPUS shall have no responsibility for any amounts over allowable costs or charges as determined by CHAMPUS.

(g) *Exclusions and limitations.* In addition to any definitions, requirements, conditions, or limitations enumerated and described in other sections of this part, the following specifically are excluded from the Basic Program:

(1) *Not medically or psychologically necessary.* Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered illness (including mental disorder) or injury, for the diagnosis and treatment of pregnancy, or for well-baby care.

(2) *Unnecessary diagnostic tests.* X-ray, laboratory, and pathological services and machine diagnostic tests not related to a specific illness or injury or a definitive set of symptoms.

(3) *Institutional level of care.* Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care.

(4) *Diagnostic admission.* Services and supplies related to an inpatient

admission primarily to perform diagnostic tests, examinations, and procedures that could have been and are performed routinely on an outpatient basis.

NOTE: If it is determined that the diagnostic x-ray, laboratory, and pathological services and machine tests performed during such admission were medically necessary and would have been covered if performed on an outpatient basis, CHAMPUS benefits may be extended for such diagnostic procedures only, but cost-sharing will be computed as if performed on an outpatient basis.

(5) *Unnecessary postpartum inpatient stay, mother or newborn.* Postpartum inpatient stay of a mother for purposes of staying with the newborn infant (usually primarily for the purpose of breast feeding the infant) when the infant (but not the mother) requires the extended stay; or continued inpatient stay of a newborn infant primarily for purposes of remaining with the mother when the mother (but not the newborn infant) requires extended postpartum inpatient stay.

(6) *Therapeutic absences.* Therapeutic absences from an inpatient facility, except when such absences specifically are included in a treatment plan approved by the Director, OCHAMPUS, or a designee.

(7) *Custodial care.* Custodial care regardless of where rendered, except as otherwise specifically provided in paragraphs (e)(12)(ii) and (iv) of this section.

(8) *Domiciliary care.* Inpatient stays primarily for domiciliary care purposes.

(9) *Rest or rest cures.* Inpatient stays primarily for rest or rest cures.

(10) *Amounts above allowable costs or charges.* Costs of services and supplies to the extent amounts billed are over the CHAMPUS-determined allowable cost or charge, as provided for in § 199.6(e).

(11) *No legal obligation to pay, no charge would be made.* Services or supplies for which the beneficiary or sponsor has no legal obligation to pay, or for which no charge would be made if the beneficiary or sponsor was not eligible under CHAMPUS.

(12) *Furnished without charge.* Services or supplies furnished without charge.

(13) *Furnished by local, state, or Federal Government.* Services and supplies paid for, or eligible for payment, directly or indirectly by a local, state, or Federal Government, except as provided under CHAMPUS, or by government hospitals serving the general public, or medical care provided by a Uniformed Service medical care facility, or benefits provided under title XIX of the Social Security Act (Medicaid) (refer to § 199.8 of this part).

(14) *Study, grant, or research programs.* Services and supplies provided as a part of or under a scientific or medical study, grant, or research program.

(15) *Not in accordance with accepted standards, experimental or investigational.* Services and supplies not provided in accordance with accepted professional medical standards; or related to essentially experimental or investigational procedures or treatment regimens.

(16) *Immediate family, household.* Services or supplies provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household.

(17) *Double coverage.* Services and supplies that are (or are eligible to be) payable under another medical insurance or program, either private or governmental, such as coverage through employment or Medicare (refer to § 199.8 of this part).

(18) *Nonavailability Statement required.* Services and supplies provided under circumstances or in geographic locations requiring a Nonavailability Statement (DD Form 1251), when such a statement was not obtained.

(19) *Preauthorization required.* Services or supplies which require preauthorization if preauthorization was not obtained. Services and supplies which were not provided according to the terms of the preauthorization. The Director, OCHAMPUS, or a designee, may grant an exception to the requirement for preauthorization if the services otherwise would be payable except for the failure to obtain preauthorization.

(20) *Psychoanalysis or psychotherapy, part of education.* Psychoanalysis or psychotherapy provided to a benefi-

ciary or any member of the immediate family that is credited towards earning a degree or furtherance of the education or training of a beneficiary or sponsor, regardless of diagnosis or symptoms that may be present.

(21) *Runaways.* Inpatient stays primarily to control or detain a runaway child, whether or not admission is to an authorized institution.

(22) *Services or supplies ordered by a court or other government agency.* Services or supplies, including inpatient stays, directed or agreed to by a court or other governmental agency. However, those services and supplies (including inpatient stays) that otherwise are medically or psychologically necessary for the diagnosis or treatment of a covered condition and that otherwise meet all CHAMPUS requirements for coverage are not excluded.

(23) *Work-related (occupational) disease or injury.* Services and supplies required as a result of occupational disease or injury for which any benefits are payable under a worker's compensation or similar law, whether or not such benefits have been applied for or paid; except if benefits provided under such laws are exhausted.

(24) *Cosmetic, reconstructive, or plastic surgery.* Services and supplies in connection with cosmetic, reconstructive, or plastic surgery except as specifically provided in paragraph (e)(8) of this section.

(25) *Surgery, psychological reasons.* Surgery performed primarily for psychological reasons (such as psychogenic).

(26) *Electrolysis.*

(27) *Dental care.* Dental care or oral surgery, except as specifically provided in paragraph (e)(10) of this section.

(28) *Obesity, weight reduction.* Services and supplies related to obesity or weight reduction whether surgical or nonsurgical; wiring of the jaw or any procedure of similar purpose, regardless of the circumstances under which performed; except that benefits may be provided for the gastric bypass, gastric stapling, or gastroplasty procedures in connection with morbid obesity as provided in paragraph (e)(15) of this section.

(29) *Transsexualism or hermaphroditism.* Services and supplies related to transsexualism (or other conditions such as gender dysphoria) or hermaphroditism (including but not limited to intersex surgery, psychotherapy, and prescription drugs), except as specifically provided in paragraph (e)(7) of this section for children 10 years of age or under.

(30) *Sexual dysfunctions or inadequacies.* Sex therapy or other services or supplies provided in connection with sexual dysfunctions or inadequacies, sex behavior modification.

(31) *Corns, calluses, and toenails.* Removal of corns or calluses or trimming of toenails and other routine podiatry services, except those required as a result of a diagnosed systemic medical disease affecting the lower limbs, such as severe diabetes.

(32) *Dyslexia.*

(33) *Surgical sterilization, reversal.* Surgery to reverse surgical sterilization procedures.

(34) *Artificial insemination.* Services and supplies related to artificial insemination (including semen donors and semen banks).

(35) *Nonprescription contraceptives.*

(36) *Tests to determine paternity or sex of a child.* Diagnostic tests to establish paternity of a child; or tests to determine sex of an unborn child.

(37) *Preventive care.* Preventive care, such as routine, annual, or employment-requested physical examinations; routine screening procedures; immunizations, except that the following are not excluded:

(i) Well-baby care, including newborn examination, Phenylketonuria (PKU) testing, and newborn circumcision.

(ii) Rabies shots.

(iii) Tetanus shot following an accidental injury.

(iv) Rh immune globulin.

(v) Genetic tests as specified in paragraph (e)(3)(ii) of this section.

(vi) Immunizations and physical examinations provided when required in the case of dependents of active duty military personnel who are traveling outside the United States as a result of an active member's duty assignment and such travel is being performed under orders issued by a Uniformed Service.

(38) *Chiropractors and naturopaths.* Services of chiropractors and naturopaths whether or not such services would be eligible for benefits if rendered by an authorized provider.

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition, for example, educational counseling, vocational counseling, and counseling for socioeconomic purposes. Services provided by a marriage, family, or pastoral counselor in the treatment of a mental disorder are covered only as specifically provided in §199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized alcohol rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

(40) *Acupuncture.* Acupuncture, whether used as a therapeutic agent or as an anesthetic.

(41) *Hair transplants, wigs, or hairpieces.*

NOTE: In accordance with section 744 of the DoD Appropriation Act for 1981 (Pub. L. 96-527), CHAMPUS coverage for wigs or hairpieces is permitted effective December 15, 1980, under the conditions listed below. Continued availability of benefits will depend on the language of the annual DoD Appropriation Acts.

(i) *Benefits provided.* Benefits may be extended, in accordance with the CHAMPUS-determined allowable charge, for one wig or hairpiece per beneficiary (lifetime maximum) when the attending physician certifies that alopecia has resulted from treatment of a malignant disease and the beneficiary certifies that a wig or hairpiece has not been obtained previously through the U.S. Government (including the Veterans Administration).

(ii) *Exclusions.* The wig or hairpiece benefit does not include coverage for the following:

(A) Alopecia resulting from conditions other than treatment of malignant disease.

(B) Maintenance, wig or hairpiece supplies, or replacement of the wig or hairpiece.

(C) Hair transplants or any other surgical procedure involving the attachment of hair or a wig or hairpiece to the scalp.

(D) Any diagnostic or therapeutic method or supply intended to encourage hair regrowth.

(42) *Education or training.* Academic education or vocational training services and supplies, unless the provisions of paragraph (b)(1)(v) of this section relating to general or special education, apply.

(43) [Reserved]

(44) *Exercise.* General exercise programs, even if recommended by a physician and regardless of whether or not rendered by an authorized provider. In addition, passive exercises and range of motion exercises also are excluded, except when prescribed by a physician and rendered by a physical therapist concurrent to, and as an integral part of, a comprehensive program of physical therapy.

(45) *Audiologist, speech therapist.* Services of an audiologist or speech therapist, except when prescribed by a physician and rendered as a part of treatment addressed to the physical defect itself and not to any educational or occupational deficit.

(46) *Vision care.* Eye exercises or visual training (orthoptics).

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraph (c)(2)(xvi) of this section or except when rendered in connection with medical or surgical treatment of a covered illness or injury. Vision and hearing screening in connection with well-baby care is not excluded.

(48) *Prosthetic devices.* Prostheses, except artificial limbs and eyes, or if an item is inserted surgically in the body as an integral part of a surgical procedure. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

(49) *Orthopedic shoes.* Orthopedic shoes, arch supports, shoe inserts, and other supportive devices for the feet, including special-ordered, custom-made built-up shoes, or regular shoes later built up.

(50) *Eyeglasses.* Eyeglasses, spectacles, contact lenses, or other optical

devices, except as specifically provided under paragraph (e)(6) of this section.

(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices.

(52) *Telephonic services.* Services or advice rendered by telephone or other telephonic device, including remote monitoring, except for transtelephonic monitoring of cardiac pacemakers.

(53) *Air conditioners, humidifiers, dehumidifiers, and purifiers.*

(54) *Elevators or chair lifts.*

(55) *Alterations.* Alterations to living spaces or permanent features attached thereto, even when necessary to accommodate installation of covered durable medical equipment or to facilitate entrance or exit.

(56) *Clothing.* Items of clothing or shoes, even if required by virtue of an allergy (such as cotton fabric as against synthetic fabric and vegetable-dyed shoes).

(57) *Food, food substitutes.* Food, food substitutes, vitamins, or other nutritional supplements, including those related to prenatal care.

(58) *Enuresis.* Enuretic devices; enuretic conditioning programs.

(59) *Biofeedback.*

(60) *Autopsy and postmortem.*

(61) *Camping.* All camping even though organized for a specific therapeutic purpose (such as diabetic camp or a camp for emotionally disturbed children), and even though offered as a part of an otherwise covered treatment plan or offered through a CHAMPUS-approved facility.

(62) *Housekeeper, companion.* Housekeeping, homemaker, or attendant services; sitter or companion.

(63) *Noncovered condition, unauthorized provider.* All services and supplies (including inpatient institutional costs) related to a noncovered condition or treatment, or provided by an unauthorized provider.

(64) *Comfort or convenience.* Personal, comfort, or convenience items such as beauty and barber services, radio, television, and telephone.

(65) *"Stop smoking" programs.* Services and supplies related to "stop smoking" regimens.

(66) *Megavitamin psychiatric therapy, orthomolecular psychiatric therapy.*

(67) *Transportation.* All transportation except by ambulance, as specifically provided under paragraph (d) of this section.

(68) *Travel.* All travel even though prescribed by a physician and even if its purpose is to obtain medical care, except as specified in paragraph (a)(6) of this section in connection with a CHAMPUS-required physical examination.

(69) *Institutions.* Services and supplies provided by other than a hospital, unless the institution has been approved specifically by OCHAMPUS. Nursing homes, intermediate care facilities, halfway houses, homes for the aged, or institutions of similar purpose are excluded from consideration as approved facilities under the Basic Program.

NOTE: In order to be approved under CHAMPUS, an institution must, in addition to meeting CHAMPUS standards, provide a level of care for which CHAMPUS benefits are payable.

(70) *Supplemental diagnostic services.* Diagnostic services including clinical laboratory examinations, x-ray examinations, pathological examinations, and machine tests that produce hard-copy results performed by civilian providers at the request of the attending Uniformed Service medical department physician (active duty or civil service).

(71) *Supplemental consultations.* Consultations provided by civilian providers at the request of the attending Uniformed Services medical department physician (active duty or civil service).

(72) *Inpatient mental health services.* More than 60 days of inpatient mental health services in any calendar year, unless additional coverage is granted by the Director, OCHAMPUS, or a designee, in accordance with paragraph (b)(5)(ix) of this section. This exclusion does not apply to services provided under the provisions of § 199.5 of this part; services provided on less than a 24-hour-a-day basis; or services provided in a CHAMPUS-authorized residential treatment center that meets the requirements of paragraph (b)(4)(v) of § 199.6 of this part.

(73) *Not specifically listed.* Services and supplies not specifically listed as a benefit in this part. This exclusion is not intended to preclude extending benefits for those services or supplies specifically determined to be covered within the intent of this part by the Director, OCHAMPUS, or a designee, even though not otherwise listed.

NOTE: The fact that a physician may prescribe, order, recommend, or approve a service or supply does not, of itself, make it medically necessary or make the charge an allowable expense, even though it is not listed specifically as an exclusion.

§ 199.5 Program for the Handicapped (PFTH).

(a) *General.* The PFTH is essentially a program of financial assistance for military personnel on active duty whose spouses or children may be moderately or severely mentally retarded or seriously physically handicapped and in need of specialized institutional care, training, or rehabilitation, and the required services are not available from public institutions or agencies. The PFTH was established by Congress to be a source of financial assistance when an active duty member's handicapped dependents, by virtue of residency laws, have been excluded from appropriate publicly operated programs or institutions for the handicapped. There is, therefore, a requirement that all local resources must be considered and those determined as adequate be utilized first, before an application for coverage under the PFTH will be acted on by the Director, OCHAMPUS, or a designee. There is a further requirement that all institutional care otherwise authorized be provided in not-for-profit CHAMPUS-approved institutions. Coverage for any services or supplies under the PFTH requires prior approval.

(1) *Physical or mental examinations.* The Director, OCHAMPUS, or a designee, may request a beneficiary to submit to one or more appropriate medical (including psychiatric) examinations to determine the beneficiary's entitlement to benefits for which application has been made or for otherwise authorized services and supplies required in the proposed management plan for the handicapped dependent. When such an examination has been requested, CHAMPUS will withold payment of any pending claim or claims or preauthorization requests on that particular beneficiary. If the beneficiary or sponsor does not agree to the requested examination, or unless prevented by a medical reason acceptable to CHAMPUS, the examination is not performed within 90 days of the initial request, all pending claim or claims for services and supplies will be denied. A denial of payments for such services or supplies provided before and related to the request for a physical examination is not subject to reconsideration. The cost of the examination or examinations will be at the expense of CHAMPUS (including any related beneficiary transportation costs). The examination or examinations may be performed by a physician or physicians in a Uniformed Services medical facility or by an appropriate civilian physician, as determined and selected by the Director, OCHAMPUS, or a designee, who is responsible for making such arrangements as are necessary.

(2) *Right to information.* As a condition precedent to the provision of benefits hereunder, OCHAMPUS or CHAMPUS fiscal intermediaries shall be entitled to receive information from a physician or hospital or other person, institution, or organization (including a local, state, or Federal Government agency) providing services or supplies to the beneficiary for which claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, examination, diagnosis of, treatment rendered, or services and supplies furnished to, a beneficiary and shall be necessary for the accurate and efficient administration of CHAMPUS benefits. In addition, before a determination on a request for preauthorization or claim of benefits is made, a beneficiary or sponsor must provide particular additional information relevant to the requested determination, when necessary. The recipient of such information shall in every case hold such records confidential except when (i) disclosure of such information is

BEST COPY AVAILABLE

authorized specifically by the beneficiary; (ii) disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions; or (iii) disclosure is authorized or required specifically under the terms of the Privacy or Freedom of Information Acts (refer to § 199.1(m) of this part). For the purposes of determining the applicability of and implementing the provisions of §§ 199.8, 199.11 and 199.12, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries, without consent or notice to any beneficiary or sponsor, may release to any insurance company or other organization, government agency, provider, or other entity any information with respect to any beneficiary when such release constitutes a routine use duly published in the FEDERAL REGISTER in accordance with the Privacy Act. Before a beneficiary's or sponsor's claim of benefits will be adjudicated, the beneficiary or sponsor must furnish to CHAMPUS that information which reasonable may be expected to be in his or her possession and that is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(3) *Timely filing of claims.* All claims submitted for benefits under this section must be filed with the appropriate CHAMPUS fiscal intermediary no later than December 31 of the calendar year following the one in which the covered service or supply was provided. Failure to file a claim timely automatically waives all rights to any benefits for otherwise covered services or supplies (refer to § 199.7 of this part.)

(4) *Eligibility for benefits*—(i) *Eligibility criteria.* Eligibility criteria for CHAMPUS generally are contained in § 199.3 of this part. However, coverage under the PFTH includes and is further limited to:

(A) The dependents, as defined in § 199.3 but excluding former spouses, of a member of one of the Uniformed Services who is under call or order to active duty that does not specify a period of 30 days or less, who are moderately or severely mentally retarded or who have a serious physical handicap; or

(B) The dependents of a deceased active duty service member who died after January 1, 1967, while eligible for receipt of hostile fire pay or from a disease or injury incurred while eligible for such pay, who are 21 years of age, and who otherwise meet the criteria of paragraph (a)(4)(i)(A) and were receiving benefits under the PFTH at the time of said member's death.

(ii) *Sponsor ceases to be active duty member.* When the sponsor ceases to be an active duty member because of death, benefits under the PFTH may be continued through the last day of the calendar month following the month in which the sponsor's death occurred. When the sponsor ceases to be an active duty member for any other reason, such as retirement, separation, or deserter status, benefits under the PFTH cease as of 12:01 a.m. of the day following the day the status of the sponsor changes. Exception is made only for those spouses and children under 21 years of age of deceased members qualifying for continued benefits under the provisions of paragraph (a)(4)(i)(B). Any support or aid for the handicapped dependent after CHAMPUS benefits cease is the responsibility of the sponsor (or parent or guardian).

(iii) *Scope of benefits.* Subject to the conditions and limitations set forth in this part the PFTH provides financial assistance toward the purchase of services or supplies necessary for the following:

(A) Diagnosis.

(B) Inpatient, outpatient, and home treatment.

(C) Training, rehabilitation, and special education.

(D) Institutional care in private not-for-profit or public and state institutions and facilities.

(E) When appropriate, transportation to and from such institutions and facilities.

(b) *Cost-sharing.* The sponsor is required to pay a portion of the costs for each month in which the dependent receives benefits under the PFTH. The amount the sponsor pays is based upon the pay grade. The amounts required of members in each pay grade are as follows:

Member's pay grade	Share amount
E-1 through E-5	$25
E-6	30
E-7 and O-1	35
E-8 and O-2	40
E-9, W-1, W-2, and O-3	45
W-3, W-4, and O-4	50
O-5	65
O-6	75
O-7	100
O-8	150
O-9	200
O-10	250

Except as specifically set forth in paragraph (b)(3) of this section, the Government's share of the cost of any benefits provided under the PFTH cannot exceed $1,000 per month. Any amount remaining after the Government's maximum share has been reached is again the responsibility of the active duty member. In ascertaining the total charges against which the sponsor's and the Government's shares will be computed, certain considerations are made:

(1) *Charges or costs must be reasonable.* The charges or costs must be reasonable for the services or supplies provided. The cost-share computations will be made on the amount determined to be allowable under the method used in the operation of the Basic Program (refer to § 199.6 of this part) and equivalent to a monthly billing unit.

(2) *CHAMPUS share limit.* The CHAMPUS share of the allowable charges or costs of all benefits provided the handicapped beneficiary in a given month will not exceed $1,000 per month, except when there are two or more handicapped dependents in the same family as described in paragraph (b)(3), in this section.

(3) *Two or more handicapped dependents.* When an active duty member has two or more dependent incurring expenses in a given month, the active duty member's monthly obligation will not be greater than he or she would be required to pay if he or she had but one such dependent receiving benefits under the PFTH. Such active duty member will be charged on the basis of the handicapped dependent incurring the lease expense under the PFTH in any given month. The active member is obligated, however, to pay at least the amount indicated for his or her applicable pay grade shown in paragraph (b) of this section. When the cost for one dependent is less than the amount shown for the applicable pay grade, the active member is obligated to pay such additional amount as is required to meet the cost for his or her pay grade towards satisfying the bill of the second dependent receiving benefits under the PFTH.

(4) *No prepayment of services.* In no case will payment be made in advance for services not yet rendered.

(5) *Absence from an institution, cost-sharing implications.* As a general rule, CHAMPUS will not cost-share any costs incurred during a period the handicapped dependent is absent from an institution with the following exceptions:

(i) *Illness or injury requiring hospitalization.* When the handicapped dependent requires hospitalization, benefits under the PFTH may be continued up to the last day of the calendar month following the calendar month in which the hospital inpatient stay began.

(ii) *Emergency situations.* Benefits under the PFTH may be continued in authentic emergency situations, such as serious illness of death in the immediate family, but in no case longer than 7 days including travel time.

(iii) *Therapeutic absences.* When a handicapped dependent leaves an institution for a therapeutic absence, benefits under the PFTH may be continued for a period not to exceed 72 hours including travel time.

(iv) *Holiday or school vacation.* When a handicapped dependent leaves an institution for a recognized holiday or school vacation during the school term, benefits under the PFTH are limited to no more than 7 days each, including travel time, except that one such absence of up to 15 days, including travel time, is authorized each year. Payments for holiday and vacation absences are authorized only when all paying patients in the facility are charged for the absence.

(v) *Recording of absences.* All absences must be noted on the claim form and a detailed statement attached to the claim form explaining the duration and reason for the absence. Failure to do so will result in termination of benefits.

(c) *Criteria for qualifying for PFTH benefits*—(1) *General requirements.* To be considered for benefits, the applicant must be determined medically to be moderately or severely mentally retarded or seriously physically handicapped to the following extent:

(i) *Duration of handicap.* The condition is expected to result in death, or has lasted, or is, with reasonable certainty, expected to last for a minimum of 12 months; and

(ii) *Extent of handicap.* The disability caused by the handicap is of such severity as to preclude the handicapped applicant from engaging substantially in basic productive activities of daily living expected of unimpaired persons of the same age group.

(2) *Management plan.* The services and supplies provided the applicant under the PFTH must be appropriated to the applicant's disability and, to the greatest extent possible, should benefit the applicant through the treatment of the disabling condition or by enhancing the applicant's ability to cope with or overcome the disability. The primary goal of the PFTH is to maximize the potential of the handicapped person to achieve as normal a life style as possible and to maintain the handicapped person in or to return the handicapped person to the home, public school, and community environment, whenever possible.

(3) *Purchase limitations.* Such services and supplies as may be authorized for purchase under the PFTH are limited appropriately to functional and utilitarian services and supplies. Utility and economy will be given primary consideration in approval of equipment.

EXAMPLE. When basic mobility is required, a manual wheelchair will be authorized, unless the physical disability is such that only an electric wheelchair is suitable.

(4) *Application approval*—(i) *Authority for approval.* The Director, OCHAMPUS, is vested with the final authority on all applications for coverage under the PFTH. This includes the determination as to the severity of the handicap and the appropriateness of the supplies or services to the handicapping condition for which coverage is requested. The Director, OCHAMPUS, or a designee, shall request such information as is deemed necessary to make these determinations before issuing approvals or denials. Failure to supply such information will result in deferral or denial of the application for coverage.

(ii) *Deferral or denial of application.* In those situations where a deferral or denied application for coverage under the PFTH subsequently is approved, such subsequent approval may be applied retroactively to the date coverage would have been effective had adequate information been provided.

(d) *Mental retardation*—(1) *Definition.* Mental retardation refers to subnormal general intellectual functioning and is associated with impairment of either learning and social adjustment or maturation, or both. The diagnostic classification of moderate and severe mental retardation relates to intelligence quotient (IQ) as follows:

(i) *Moderate.* Moderate mental retardation equates to IQ 36–51.

(ii) *Severe.* Severe mental retardation equates to IQ 35 and under.

NOTE: It is recognized that IQ should not be the only criterion used in making a diagnosis of mental retardation or in evaluating its severity. It should serve only to help in making a clinical judgment of the patient's adaptive behavioral capacity. This judgment also should be based on an evaluation of the patient's developmental history and present functioning, including academic and vocational achievement, motor skills, and social and emotional maturity.

(2) *Acceptable tests to measure intelligence.* The Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children (WISC) or Wechsler Adult Intelligence Scale (WAIS) are the CHAMPUS instruments of choice to determine IQ; however, a Stanford-Binet will be accepted. A person who cannot be tested by an age-appropriate instrument listed above can be tested by another test, provided that an acceptable explanation of why one of the listed tests could not be used is furnished to OCHAMPUS, along with a detailed ex-

planation of "scoring" the test, for the purpose of statistical comparison with one of the above tests. IQ tests must be interpreted by a qualified psychologist certified by the state where the test is administered. In states where certification is not required, the psychologist must have at least a master's degree in psychology. In states that certify "psychometrists" to administer and interpret IQ tests, that certification will suffice.

(e) *Serious physical handicap*—(1) *Definition.* Serious physical handicap means a medical condition of the body that meets the following criteria:

(i) *Duration of handicap.* The condition is expected to result in death, or which has lasted, or with reasonable certainty is expected to last, for a minimum period of 12 months; and

(ii) *Extent of handicap* The condition is of such severity as to preclude the handicapped person from engaging substantially in basic productive activities of daily living expected of unimpaired persons of the same age group. For example:

(A) Persons older than high school age generally must be unable to engage in gainful pursuits because of the handicap.

(B) Persons of up to and through high school age must be unable to be provided an education through the public school system because of the handicap.

(2) *Examples of conditions that may cause serious physical handicaps.* Examples include, but are not limited to, the following listed categories:

(i) *Visual impairment, age 7 and over.* A vision impairment will be considered serious in persons 7 years of age and older if the handicapped person requires assistance to support the activities of daily living and if the following apply:

(A) The remaining vision in the better eye after best correction is 20/200 or less; or

(B) The contraction of visual fields to 10 degrees or less from the point of fixation; or

(C) The widest diameter subtends an angle no greater than 20 degrees; or

(D) The visual efficiency of the better eye after best correction is 20 percent or less; or

(E) Other conditions impairing visual function such as complete homonymous hemianopsia, or total bilateral ophthalmoplegia.

(ii) *Visual impairment, under age 7.* A visual impairment is children under 7 years of age will be considered serious (even if correctable with lenses) when the visual impairment is manifested by 20/60 vision or less.

(iii) *Hearing impairment, testable patients.* A hearing impairment is a serious physical handicap when, unaided by amplification, it is manifested by the following:

(A) A 45 decibel hearing threshold level (HL) or poorer in either ear tested at 1,000; 2,000; or 3,000 Hertz (Hz) frequencies; or by

(B) A 30 decibel HL or poorer in each ear tested at 1,000; 2,000 or 3,000 Hz frequencies; or by

(C) Speech discrimination of 60 percent or poorer with either ear.

(iv) *Hearing impairment, nontestable patients.* When pure tone audiometry or speech discrimination testing is not available or not reliable because of the patient's age or condition, the attending physician must submit documentation that demonstrates the patient is unable to engage in basic productive activities of daily living expected of unimpaired persons of the same age group. An example of acceptable documentation would be electrophysiological tests of hearing such as auditory evoked potential testing or a behaviorial assessment that shows that, without special help, an infant with a hearing impairment will not develop normal language. Each case will be reviewed on its own merits.

(v) *Epilepsy, major.* Major motor seizures (grant mal or psychomotor) substantiated by an electroencephalogram (EEG), occurring more frequently than once a month despite prescribed treatment. With:

(A) Diurnal episodes (loss of consciousness) and convulsive seizures; or

(B) Nocturnal episodes that show residuals interfering with activity during the day; and

(C) Both or either of the above that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(vi) *Epilepsy, minor.* Minor motor seizures (petit mal or psychomotor) substantiated by an EEG, occurring more frequently than once weekly despite prescribed treatment. With:

(A) Alteration of awareness or loss of consciousness; and

(B) Transient postictal manifestations of unconventional or antisocial behavior; and

(C) Both of the above that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(vii) *Paralysis agitans (Parkinson's disease).* With: tremor, rigidity, and significant impairment of mobility (for example, festination) that has reached the point when the handicapped person requires assistance to support the activities of daily living.

(viii) *Cerebral palsy.* With:

(A) IQ of 83 or less; or

(B) Abnormal behavior patterns, such as destructiveness, or emotional instability; or

(C) Significant interference in communication due to speech, hearing, or visual defect; or

(D) Significant motor deficit in two extremities; and

(E) Any of the above having reached a point when the handicapped person requires assistance to support the activities of daily living.

(ix) *Multiple sclerosis.* With:

(A) Significant motor deficits in two extremities; and

(B) Ataxia substantiated by appropriate cerebellar signs or proprioceptive loss; and

(C) Both of the above that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(x) *Muscular dystrophy.* With:

(A) Significant motor impairment and restricted mobility; and

(B) Flexion deformities of both lower extremities; or

(C) Significant weakness or paralysis of muscles of the shoulder girdle or of the neck, with abduction of both arms at the shoulder restricted to less than 90 degrees; and

(D) The conditions having reached the point when the handicapped person requires assistance to support the activities of daily living.

(xi) *Degenerative neurological diseases.* Other degenerative neurological diseases (such as Huntington's chorea, Friedrich's ataxia, or spinocerebellar degeneration) that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(xii) *Musculoskeletal system.* Serious impairments of the musculoskeletal system that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(xiii) *Respiratory system.* Serious impairments of the respiratory system that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(xiv) *Trauma.* Serious impairments resulting from trauma that are at a level that requires assistance to support the activities of daily living.

(xv) *Diabetes mellitus.* Severe physical limitations resulting from diabetes mellitus occurring in children (that is, under 18 years of age) that have reached the point when the handicapped person requires assistance to support the activities of daily living.

(xvi) *Multiple conditions.* Two or more conditions involving separate body systems, neither condition in itself seriously handicapping, but which combined are of such severity as to limit activities in a seriously handicapping manner and have resulted in the handicapped person requiring assistance to support the activities of daily living. Each such multiple condition case will be reviewed on its own merits.

(f) *Procedures for obtaining benefits.* Active duty members seeking benefits under the PFTH for a dependent spouse or child must secure authorization from OCHAMPUS for such benefits in advance. Payment will not be made for any services or supplies under the PFTH received or obtained before approval of the application by the Director, OCHAMPUS, or a designee. If a beneficiary fails to obtain preauthorization before receiving the services, the Director, OCHAMPUS, or a designee, may extend CHAMPUS benefits if the services or supplies otherwise would qualify for benefits but for the failure to obtain preauthorization.

(1) *Completed application.* Application is made by completing a CHAMPUS Form 190a, "Request for Health Benefits Under the Program for the Handicapped" (as may be amended), and mailing it to the Director, OCHAMPUS, Aurora, Colorado 80045-6900.

(2) *Additional required information.* The applicant also shall submit, along with the required CHAMPUS Form 190a, the following:

(i) *Statement of dependent's condition.* A medical statement of the dependent's condition, giving a specific diagnosis, using the most current ICD-CM, history of mental retardation or physical handicap, present condition, prognosis, and a proposed, detailed management plan for the handicapping condition, including estimated charges or costs. This statement must be signed by the supervising physician. The medical report may be submitted directly by the physician if so desired.

(ii) *Use of other than public facilities.* Within the United States, if the management plan proposes to use other than public facilities, a statement is required from a cognizant public offical certifying to the fact that public facilities are or are not available or are or are not adequate to meet the needs of the handicapped dependent, and that public funds are or are not made available for support of the needs of the handicapped dependent in alternative facilities deemed adequate.

Note: Inasmuch as there is great diversity in the types of public programs and institutions offering services to the handicapped, it is impossible to list in detail the cognizant public officials in each state, county, or local community. As a general rule, the cognizant public official is associated with a public program and has broad knowledge of and authority for providing, the services related to the types of handicap for which CHAMPUS benefits are being requested. For example, in the case of a mentally retarded school-age child who needs to be placed in a special class for the educable handicapped, the cognizant public official could be the Director of Special Education for the local school district rather than the principal of the nearest school. In some states where special educational programs are managed at the state level, the cognizant public official may have to be the State Director of Special Education. In still other cases when some kind of vocational rehabilitation is required, the cognizant public official may be an official in the State Department of Vocational Rehabilitation; while in another state all vocational rehabilitation programs may be controlled by the Department of Human Resources or the Department of Social Services. It is the sponsor's responsibility to determine the appropriate cognizant public official.

(iii) *Information on available programs.* OCHAMPUS will assist a sponsor to obtain information from those agencies that are possible sources of assistance for the specific condition.

(iv) *Application review procedure.* A review of PFTH applications shall be done by the Director, OCHAMPUS, or a designee, who shall:

(A) Determine if the dependent's degree of mental retardation or physical disability (as documented by a physician) is such as to qualify for benefits;

(B) Evaluate the proposed management plan to determine if it is appropriate to the handicapping condition and if the charge or cost is reasonable; or if the services to be provided can be obtained more effectively and economically in another CHAMPUS-approved facility providing the same services; and

(C) Evaluate the cognizant public official's statement if the management plan proposes the use of private facilities. If in the opinion of the Director, OCHAMPUS, or a designee, the statement of the cognizant public official is inadequate or inappropriate, additional information will be required and the sponsor will be required to contact the agency or official determined to be most cognizant of PFTH in the sponsor's community and obtain a statement as to availability or nonavailability of appropriate public facilities.

Note: Because of both the wide variety of handicapping conditions and the large number of public institutions and agencies that operate independently of each other, the Director, OCHAMPUS, or a designee, will establish contact with these institutions and agencies and offer information and assistance on CHAMPUS beneficiaries so that they can obtain access to those public programs to which they have a legal entitlement. This will include information on such matters as the Interstate Compact in which many states participate, state laws regarding the right to education, services under the Rehabilitation Act, and similar programs. Approval for PFTH benefits will be issued only when it has been determined to the satisfaction of the Director, OCHAMPUS, or a designee, that the required services are not available from public sources and that the proposed plan of management will be beneficial to the handicapped person.

(v) *Application approval, limitations.* The application approval will be specific as to the approved facility, management plan, or services and supplies being authorized under the PFTH as well as the specific period of time for which authorization is being made. The application approval also may list other requirements (such as a specific reevaluation requirement in 6 months).

NOTE: The approved application is valid only for 90 days. If admission to the approved facility is not accomplished or the management plan is not commenced within 90 days of the date the application is approved, a new application must be submitted for evaluation.

(vi) *Periodic review and reevaluation.* A periodic review and reevaluation of the status of dependents who have been approved for coverage under the PFTH will be conducted by the Director, OCHAMPUS, or a designee, under the following circumstances:

(A) *At least annually.* The supervising physician's report, a completed CHAMPUS Form 141, "Diagnostic Evaluation, Program for the Handicapped," a new, updated management plan, and a new cognizant public official's statement will be submitted reflecting any changes that may have occurred in the 12-month period.

NOTE: The Director, OCHAMPUS, or a designee, may require that any specific case be reviewed more often than annually.

(B) *Change of institution.* When a dependent handicapped beneficiary is removed from an institution that was approved under the PFTH, placement in a new institution requires a new application.

(C) *Sponsor reassignment.* A sponsor who is reassigned to another location within the United States will be required to determine within 60 days from the date of reporting to a new duty assignment if public facilities appropriate to the needs of the handicapped dependent are available. If they are not, it will be necessary to substantiate this fact with a new cognizant public official's statement. Failure to take such action will result in termination of coverage under the PFTH on the 61st day following the date the sponsor reported to the new duty assignment.

NOTE: If it is determined that public facilities are available at the new location, the Director, OCHAMPUS, or a designee, may determine that the handicapped beneficiary may continue to receive benefits for inpatient care at the former location under the PFTH until the end of the current school year.

(g) *Use of public facilities.* To qualify for benefits under the PFTH, public facilities or state funds must be used to the greatest extent they are available or adequate.

(1) *Statement of school official or other cognizant public official.* For dependents for whom special educational benefits are requested, the sponsor must submit a statement from the superintendent of the local public school district, or designee, that the public school district is aware in detail of the dependent's tested educational handicaps and that an adequate education opportunity is or is not available for the dependent, either in the public schools or through public resources. A statement must be made by certificate whether or not applicable law requires public funds to help defray the cost of private schooling if public schooling is not available or adequate, and if the law requires such funding. If there is a waiting list for adequate public care, the anticipated length of wait must be stated. A new statement from the superintendent of the local public school district, or a designee, will be required at the beginning of each school year or more frequently, as determined by the Director, OCHAMPUS, or a designee.

(2) *Determination that public facility is adequate.* A certified statement by a cognizant public official that a public facility or service is or is not available and is or is not adequate to meet the needs of the handicapped spouse or child is prima facie evidence of the facts stated. The Director, OCHAMPUS, or a designee, has final authority in determining whether a facility is available and adequate. CHAMPUS benefits will not be extended when the beneficiary or sponsor elects not to use the public facilities that have been determined to be available and adequate.

(3) *State contracts with private facilities.* As an exception, when a state government (but not a county or municipal government) contracts for institutional care in private facilities, payment to the state is authorized since the care provided such facilities or homes is considered to be state institutional care. In such a case, the following four requirements must be met and appropriate documentation submitted:

(i) *Determination of state responsibility.* A determination must be made by the state that it has a responsibility for providing care for the dependent's handicapping condition.

(ii) *Determination that public facility placement cannot be made.* The state or other local jurisdiction must determine that the dependent cannot be placed in a public facility and no state funds are available for such care.

(iii) *State must make placement.* The state must make the placement, or determine that it is responsible for a dependent already placed.

(iv) *Acceptable billing and financial procedure.* The State must be billed for the services provided by the private facility. The state may not simply act as an "intermediary" or a conduit for billing and payment purposes; and CHAMPUS cannot be billed by the state for a greater amount than that billed to other non-CHAMPUS patients in like circumstances.

(h) *Covered services and supplies*—(1) *General.* As a general rule, the services and supplies covered under the PFTH are those that contribute directly to the habilitation or rehabilitation of the handicapped dependent. This may include institutional care when the severity of the disability requires protective custody in an institutional setting. Active medical or surgical treatment of an acute illness may be considered under the Basic Program when such treatment is not included as a part of the management plan or a routine part of the institutional services approved under the PFTH. Notwithstanding, all services, supplies and equipment required by and directly related to the handicapping conditions, including those services and supplies approved under the management plan, shall be considered for benefits only under the PFTH, whether or not under other circumstances Basic Program benefits could apply. The only exception to this requirement is a serious, acute exacerbation of the handicapping condition requiring an inpatient hospital stay. In such a case, Basic program benefits are applicable for the required period of hospitalization.

EXAMPLES

(i) A mentally retarded child in an institution for the retarded becomes ill with appendicitis and is admitted to a general hospital for surgery. The charges related to the inpatient episode in a general hospital for the acute appendicitis are considered under the Basic Program.

(ii) Another dependent with a neurological disability, such as Parkinson's disease, is placed, under the PFTH, in an institution for patients similarly afflicted. The institutional charges are all inclusive and all residents receive services, such as routine medications, diet supplements, and periodic medical examinations, and those services and supplies are part of the total management plan. This situation would be cost-shared under the PFTH and benefits would not be available under the Basic Program.

(iii) In the third situation, a dependent who is placed in an institution under the PFTH because of Huntington's chorea, experiences an acute episodic period that warrants admission to a hospital for medical treatment of the acute phase and which was not included as a part of the approved management plan. This inpatient hospital care would be considered for benefits under the Basic Program.

(2) *Extent of covered services and supplies.* Subject to such other definitions, conditions, limitations, and exclusions enumerated in this and other Sections of this part, the following

services and supplies (including durable equipment) are covered under the PFTH:

(i) *Diagnostic evaluation.* Diagnostic evaluation on either an inpatient or outpatient basis by a physician. This includes hospitalization or institutionalization solely for the purpose of conducting diagnostic studies performed by or under the supervision of a physician if such an inpatient setting is medically necessary to perform the diagnostic evaluation. Diagnostic evaluations do not require prior approval, but are payable only in those cases resulting in approval of the handicapped beneficiary under the PFTH. If the diagnostic evaluation is done on an inpatient basis, any benefits for the inpatient stay related to such evaluation will not exceed 5 days of an inpatient stay.

(ii) *Durable equipment.* The purchase of durable equipment may be authorized when certified by a physician as necessary in the treatment, habilitation, or rehabilitation of a handicapped beneficiary. Except under extremely unusual situations (which would require individual review and consideration), durable equipment required by an institutionalized handicapped beneficiary must be provided by the institution as a part of the management plan and included in the monthly institutional charges.

(A) To qualify as durable equipment under the PFTH, the item will be evaluated against the following criteria:

(*1*) It clearly must be related to and necessary for the habilitation, treatment, or training of beneficiaries with the given handicap.

(*2*) It must improve the function of a malformed body member or retard further deterioration of the handicapped beneficiary's physical condition.

(*3*) It cannot be useful to anyone in the absence of a physical or mental disability.

(*4*) It must be used primarily and customarily to serve a medical or habilitative purpose rather than primarily for transportation, comfort, or convenience.

NOTE: A wheelchair (or CHAMPUS-approved alternative) is not considered transportation in the sense of paragraph (h)(2)(ii)(A)(*4*). It is qualified as durable equipment under paragraph (h)(2)(ii)(A)(*2*) because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond that basic mobility provided by a wheelchair (or a CHAMPUS-approved alternative) is considered to be primarily transportation.

(*5*) It cannot be beyond the appropriate level of performance and quality required under the circumstances (that is, nonluxury and nondeluxe). However, this paragraph is not intended to preclude special fitting of equipment to accommodate a particular disability (such as fitting a wheelchair for a one-armed handicapped person).

(*6*) It is not available for loan from a local Uniformed Services medical treatment facility.

(*7*) Only one similar item of durable equipment will be purchased during any one period of time, and benefits include repair of durable equipment purchased under the PFTH and its later replacement if it is determined that the previous item is no longer usable.

(*8*) There must be written preauthorization by OCHAMPUS before the date of purchase of durable equipment. Such authorization is specific as to the item of durable equipment being approved. Further, such authorization is only valid for 90 days from the date issued. If the item of durable equipment is not purchased within the time limit, a new preauthorization is required. Purchases of durable equipment may not be approved retroactively.

(*9*) Benefits also may be extended for the allowable charges for repair and replacement parts (such as batteries), including adjustment of durable equipment purchased under the PFTH. Such repair or part replacement or adjustment does not require preauthorization, unless the charge is $50 or more. In the case of an emergency, a charge above that amount may be considered without preauthorization, subject to special review.

(B) *Cost-sharing of durable equipment purchases.* Durable equipment normally will be cost-shared in the month that the purchase is made. However, when the durable equipment is a high charge or cost item, the sponsor or the beneficiary has the option of prorating the purchase price in equal monthly installments over a period not to exceed 6 months, and beginning with the month of purchase. In no case shall payments be made by CHAMPUS beyond termination of eligibility as a CHAMPUS beneficiary. No other payment option is available.

(iii) *Prescription drugs and medicines.* Prescription drugs and medicines, and insulin for a known diabetic. Drugs and medicines are limited to those approved for general use by humans (other than testing) by the U.S. Food and Drug Administration.

(iv) *Outpatient treatment.* Such outpatient treatment as may be appropriate to the treatment and habilitation of the handicapped person related to the handicapping condition is coverable. Such services include, but are not limited to, physical therapy, occupational therapy, vocational training, speech therapy, and special educational services.

(v) *Home treatment.* Certain services authorized by paragraph (h) of this section may be provided to the handicapped person in the home if that setting is considered the most reasonable and appropriate. Such services include, but are not limited to, physical therapy, occupational therapy, vocational training, speech therapy, and special educational services.

(vi) *Institutional care (inpatient).* Institutional care within the PFTH is primarily long-term residential (inpatient) care for the handicapped person in private nonprofit, public, or state institutions and facilities. Such institutions include, but are not limited to, schools for the deaf and blind and institutions for physically or mentally handicapped persons.

(vii) *Special optical devices.* Certain special optical devices necessary to ameliorate the handicapping condition are covered, but are limited to the following:

(A) Contact lenses necessary to correct a visual handicap that qualifies under paragraph (e)(2)(i) of this section.

(B) Subnormal visual corrective devices such as telescopic and isoiconic lenses.

(C) Optical aids such as hand-held optical devices for reading.

(viii) *Prosthetic devices and orthopedic appliances.* Prosthetic devices and orthopedic appliances that are needed to correct or overcome a physical disability are covered. This includes artificial limbs and orthopedic braces.

(ix) *Professional services.* The services of a wide variety of both medical and educational professionals are covered. Their services may be provided either on an inpatient or an outpatient basis subject to the following criteria.

(A) Services of professional personnel include, but are not limited to, the services of physicians, dentists, optometrists, speech pathologists, audiologists, physical therapists, occupational therapists, and nurses. Such professional personnel must be licensed within the jurisdiction in which the services are provided and must otherwise be in compliance with applicable federal and state laws regarding the practice of their specialty. Where there is no license requirement, they must be eligible for membership in the state or national association setting the standards for their respective group.

(B) Services of teachers of the handicapped who meet the standards of the school system in the jurisdiction in which located and who provide special education such as, but not limited to, remedial reading, speech training, or special classes for seriously physically handicapped or moderately or severely mentally retarded children.

(C) Services of vocational instructors who teach physically handicapped or mentally retarded persons a trade or occupation, for example, teaching a blind person to be a mechanic or typist. These instructors must meet the standards of the school system where the training is being conducted.

(D) The Director, OCHAMPUS, or a designee, is the final authority whether a professional (either a person or a class) is approved as an authorized professional provider under the PFTH.

(x) *Related therapy.* Therapy, such as family counseling, for parents of a handicapped child is authorized when needed as an integral part of the treatment for the child, as determined by the Director, OCHAMPUS, or a designee, and approved as a part of the management plan.

(xi) *Special tutoring.* Tutoring by qualified tutors provided on an outpatient basis or in the patient's home to dependents who are either physically handicapped or moderately or severely mentally retarded is an authorized benefit. Tutors must meet qualifications outlined in paragraphs (h)(2)(ix)(A), (B), (C), and (D) of this section. Private tutoring to supplement a public education or special education enhancement programs, or a training program for a child temporarily disabled due to acute illness or injury, is not covered under the PFTH.

(xii) *Surgery and medical care.* When necessary to treat or correct a handicapping condition as defined in this Section by the terms "mental retardation" (moderate or severe) or "serious physical handicap," surgery and medical care may be authorized either on an inpatient or outpatient basis. When appropriate and approved as a part of the management plan, this may include authorized adjunctive dental care.

(xiii) *Training and special education.* (A) Education or training needed to alleviate, overcome, or adjust to a serious physical handicap or moderate or severe mental retardation is an authorized benefit, provided it is included as a part of the approved management plan. This includes, but is not limited to, remedial reading, speech training, use of artificial aids, and education provided physically handicapped and mentally retarded persons on either an inpatient or outpatient basis.

(B) Training and special education also includes special vocational training or education wherein a physically handicapped or mentally retarded person is taught a trade or occupation to aid in overcoming or adjusting to his or her condition (such as teaching a blind person to be a mechanic or typist), but in no event beyond the high school level.

(xiv) *Transportation.* (A) Transportation is authorized for medically eligible handicapped dependents by government, commercial, public, or private means to and from approved facilities in which the dependent is to receive or has received institutional care for which benefits have been approved under the PFTH. Transportation must be necessary and justified by the attending physician.

(B) Transportation benefits may be requested in conjunction with an application for other benefits under the PFTH, or a request for approval of transportation benefits may be submitted separately.

(C) If other than local public transportation or transportation by privately owned vehicles is to be used, a request for approval must be supported with evidence that a less expensive means of transportation is not available, or that the means to be used is medically necessary.

(D) With respect to local transportation, if more than two round trips daily are necessary, supporting justification must be submitted. In every instance when government transportation is available, it must be used.

(E) When distant transportation is medically necessary, government transportation, when available, shall be used. Under very unusual circumstances, if determined to be medically necessary and also certified by the attending physician, transportation for a medical attendent may be approved.

(xv) *Transportation restrictions.* (A) Transportation benefits are subject to the $1,000 per month limitation on government cost under the PFTH and must be applied during the month the transportation actually occurs. The cost may not be prorated over a period of months. Any transportation cost shall be added to any other cost of care under the PFTH for that month.

(B) Reimbursement for travel costs will be made on the basis of actual transportation costs when transportation is by privately owned vehicle or the ticket costs in the case of other kinds of travel, plus other reasonable transportation costs, such as airport limousine, in connection with medically necessary air travel. Receipted bills must be obtained for any transportation costs not covered by a ticket. The cost of meals, motels, and tips that may be related to transportation is not an authorized benefit.

(C) When commercial transportation is used, the least expensive form only is authorized, such as coach or tourist class rather than first-class accommodations. Travel outside the United States is not authorized.

(D) Transportation is payable only to or from a public or private nonprofit facility. Transportation costs to or from a proprietary facility will not be paid.

(E) Carpooling will be required whenever possible when two or more handicapped dependents are seeking reimbursement of travel costs by private vehicle to and from the same location. Only the owner or operator of the vehicle used in the carpool may be reimbursed. Reimbursement is limited to actual transportation costs or $0.155 per mile, whichever is lower.

(i) *Utilization review and quality assurance.* It is the intent of this part that before any benefits may be extended, any services and supplies furnished by any provider shall be subject to utilization review and quality assurance standards, norms, and criteria issued by the Director, OCHAMPUS, or a designee.

(j) *General limitations.* All services and treatment received under the PFTH must be in connection with the handicapping condition. Medical or surgical services required, but not in connection with the handicapping condition, can be considered for benefits under the Basic Program. In such a situation, the active duty service member is responsible for cost-sharing under both programs. The following services are not covered under the PFTH:

(1) *Academic education.* Specialized academic education for those with educational or learning disabilities, normally provided in a public school system or institution of higher learning, is not covered under the PFTH. These learning disabilities include dyslexia, perceptual handicaps, hyperkinetic behavior syndrome, neurological dysfunction, reading disability, and minimal brain dysfunction. (This does not exclude learning disabilities that are derived from or related to moderate or severe mental retardation or a serious physical handicap.)

(2) *Alterations.* Alterations to living space and permanent fixtures attached thereto, even when necessary to accommodate installation of covered durable equipment or to facilitate entrance or exit, are not authorized for payment under the PFTH.

(3) *Custodial care.* Custodial care in the home, including homemaker, sitter, or companion services, is not covered.

(4) *Dental care.* Dental care, except as adjunctive dental care required in the treatment of a handicapping condition, is not authorized. Orthodontic treatment is not authorized under any circumstance.

(5) *Nonapproved drugs and medications.* Drugs and medications not approved for general use by humans by the U.S. Food and Drug Administration, whether or not legally available outside the United States. However, if a drug or medicine is listed in the *U.S. Pharmacopeia* or the *National Formulary* and requires a prescription, it is not excluded by this provision even if it is under investigation by the U.S. Food and Drug Administration as to its effectiveness.

NOTE: In areas outside the United States, standards similar to those of the U.S. Food and Drug Administration is the CHAMPUS objective.

(6) *Outside the United States.* Facilities outside the United States are not eligible as approved facilities under the PFTH, regardless of whether otherwise qualified. In addition, any excursions outside the United States are not covered even though part of a program offered by an approved facility is in the United States.

(k) *Authority to determine eligibility under PFTH.* The Director, OCHAMPUS, or a designee, is authorized to review a Basic Program case and make a determination that the particular beneficiary meets the definition of a moderately or severely retarded or seriously physically handicapped dependent as set forth in paragraphs (d) and (e) of this section, whether or not an application for benefits under the PFTH has been submitted by the sponsor. In such event, the Director, OCHAMPUS, or designee, will notify the sponsor that benefits for services or supplies related to the handicapping condition or conditions are no longer available under the Basic Program (except under those circumstances specifically set forth in this Section), and further, that the Basic Program case will be transferred to the PFTH as of the 1st day of the 2nd month following the date of such notice.

(l) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

§ 199.6 Authorized providers.

(a) *General.* This section sets forth general policies and procedures that are the basis for the CHAMPUS cost-sharing of medical services and supplies provided by institutions, individuals, or other types of providers.

(1) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that CHAMPUS will pay automatically a claim for services or supplies provided by such a provider. CHAMPUS fiscal intermediaries also must determine if the patient is an eligible beneficiary and whether the services or supplies billed are authorized and medically necessary, regardless of the standing of the provider.

(2) *Outside the United States or emergency situations within the United States.* Outside the United States or within the United States and Puerto Rico in emergency situations, the Director, OCHAMPUS, or a designee, after review of the facts, may provide payment to or on behalf of a beneficiary who receives otherwise covered services or supplies from a provider of service that does not meet the standards described in this part.

NOTE: Only the Secretary of Defense, the Secretary of Health and Human Services, or the Secretary of Transportation, or their designees, may authorize (in emergency situations) payment to civilian facilities in the United States that are not in compliance with title VI of the Civil Rights Act of 1964. For the purpose of the Civil Rights Act only, the United States includes the 50 states, the District of Columbia, Puerto Rico, Virgin Islands, American Samoa, Guam, Wake Island, Canal Zone, and the territories and possessions of the United States.

(3) *Conflict of interest.* 5 U.S.C. 5536 prohibits medical personnel who are active duty members or civilian employees of the Government from receiving additional Government compensation above their normal pay and allowances for medical care rendered. This prohibition applies to CHAMPUS benefits whether the claim for reimbursement is filed by the person who provided the care, the facility in which the care was rendered, or by the sponsor or beneficiary. CHAMPUS payments also will be disallowed to specialized treatment facilities (STFs), RTCs, or other institutional providers that are found to employ (moonlighting) any member or employee of the Uniformed Services, either uniformed or civilian, who, through an official Federal position, has the opportunity to exert directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to that institution. This prohibition is intended to preclude possible conflicts of interest. All such instances coming to the attention of the Director, OCHAMPUS, or a designee, will be referred to the applicable Uniformed Service for investigation and appropriate action. When it appears CHAMPUS beneficiaries are being channeled to selected individual professional providers in the civilian sector when other similar participating providers are available, the Director, OCHAMPUS, or a designee, will initiate an investigation. If any conflicts or improprieties are found to exist, such cases also will be referred to the Uniformed Service concerned for appropriate action. A report of the results of the findings and action taken shall be made to the Director, OCHAMPUS, with a copy provided to the General Counsel, Department of Defense, by the Uniformed Service having jurisdiction, within 90 days of receiving the referral.

NOTE: Physicians of the National Health Service Corps (NHSC) may be assigned to remote areas where there is a shortage of medical providers. Although these physicians are prohibited from accepting CHAMPUS payments, the private organizations to which they may be assigned remain eligible for payment in certain cases, as determined by the Director, OCHAMPUS, or a designee.

(4) *Fraudulent practices or procedures.*—(i) *Provider exclusion, CHAMPUS determination.* The Director, OCHAMPUS, or a designee, shall deny payments to any provider (or to a beneficiary for the services rendered by that provider) that has been found knowingly to be submitting or making any false, fictitious, or fraudulent statement or claim against CHAMPUS or assisting any beneficiary in making similar false, fictitious, or fraudulent statements or claims. Payment also will be denied for claims resulting from care rendered by a provider subsequent to notice by OCHAMPUS of that provider's disqualification from participation in CHAMPUS. False, fictitious, and fraudulent claims include those claims in which the amount has been adjusted to an artificial level (that is, higher than the usual charge to other patients) to permit the provider to waive the deductible or cost-share amounts owed by the beneficiary or sponsor, but still compensating the provider without a significant reduction in the full amount normally received for such care. In such cases, the Director, OCHAMPUS, or a designee, also shall provide notice to the beneficiary populations in the locality of the provider for whom payments are being denied, by means of notification to Uniformed Services' facilities and offices.

(ii) *Provider exclusion, DHHS determination.* Any provider that has been determined by the Secretary of the DHHS to have furnished supplies or services that were substantially above the needs of persons, or to be harmful to persons, or to be of a grossly inferior quality, and the Secretary, on the basis of such a determination, has terminated the agreement of that provider for purposes of reimbursement under title XVIII and XIX of the Social Security Act, also will be denied CHAMPUS reimbursements (or to a beneficiary for services rendered by that provider).

(5) *For-profit institutions excluded under PFTH.* 10 U.S.C. 1079(d)(4) precludes payment of benefits under the PFTH for otherwise covered services and supplies provided by a for-profit institution (refer to § 199.5 of this part).

(6) *Utilization review and quality assurance.* It is the intent of this part that before benefits may be extended, any services and supplies furnished by any provider shall be subjected to utilization review and quality assurance standards, norms, and criteria issued by the Director, OCHAMPUS, or a designee (refer to §§ 199.4, 199.5, and 199.7 of this part).

(7) *Provider required.* In order to be considered for benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of a CHAMPUS-authorized provider practicing within the scope of his or her license.

(8) *Participating provider.* Under CHAMPUS, an authorized provider has the option of participating on a claim-by-claim basis. If a provider elects to participate, the provider signs the applicable CHAMPUS claim form or forms and checks the appropriate block, if required, and submits it to the appropriate CHAMPUS fiscal intermediary on behalf of the beneficiary. (In the case of an institution or medical supplier, the claim must be signed by an official having such authority.) This certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by (or on behalf of) the beneficiary, as full payment for the covered medical services and supplies.

(b) *Institutional providers*—(1) *General.* Institutional providers are those providers who bill for services in the name of an organizational entity (such as hospital and skilled nursing facility), rather than in the name of a person. The term "institutional provider" does not include professional corporations or associations qualifying as a domestic corporation under § 301.7701-5 of the Internal Revenue Service Regulations nor does it include other corporations that provide principally professional services. Institutional providers may provide medical services and supplies on either an inpatient or outpatient basis.

(i) *Preauthorization.* The Director, OCHAMPUS, reserves the right to require preauthorization for admission to inpatient facilities. Refer to § 199.4(a)(11) for information on preauthorization.

(ii) *Billing practices.* Institutional billings must be itemized fully and sufficiently descriptive to permit CHAMPUS to make a determination of benefits. In the case of continuous care, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days (monthly) by either the beneficiary or sponsor, or directly by the institution on behalf of the beneficiary.

(2) *Nondiscrimination policy.* Except as provided below, payment may not be made for inpatient or outpatient care provided and billed by an institutional provider found by the Federal Government to practice discrimination in the admission of patients to its services on the basis of race, color, or national origin. Reimbursement may not be made to a beneficiary who pays for care provided by such a facility and submits a claim for reimbursement. In the following circumstances, the Secretary of Defense, or a designee, may authorize payment for care obtained in an ineligible facility:

(i) *Emergency care.* Emergency inpatient or outpatient care.

(ii) *Care rendered before finding of a violation.* Care initiated before a finding of a violation and which continues after such violation when it is determined that a change in the treatment facility would be detrimental to the health of the patient, and the attending physician so certifies.

(iii) *Other facility not available.* Care provided in an ineligible facility because an eligible facility is not available within a reasonable distance.

(3) *Procedures for qualifying as a CHAMPUS-approved institutional provider.* General and special hospitals otherwise meeting the qualifications outlined in paragraphs (b)(4) (i), (ii), and (iii), of this section are not required to request CHAMPUS approval formally.

(i) *JCAH accreditation status.* Each CHAMPUS fiscal intermediary shall keep informed as to the current JCAH accreditation status of all hospitals and skilled nursing facilities in its area; and the provider's status under Medicare, particularly with regard to compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d(1)). The Director, OCHAMPUS, or a designee, shall specifically approve all other authorized institutional providers providing services to CHAMPUS beneficiaries. At the discretion of the Director, OCHAMPUS, any facility that is certified and participating as a provider of services under title XVIII of the Social Security Act (Medicare), may be deemed to meet CHAMPUS requirements. The facility must be providing a type and level of service that is authorized by this part.

(ii) *Required to comply with criteria.* Facilities seeking CHAMPUS approval will be expected to comply with appropriate criteria set forth in paragraph (b)(4) of this section. They also are required to complete and submit CHAMPUS Form 200, "Required Information, Facility Determination Instructions," and provide such additional information as may be requested by OCHAMPUS. An onsite evaluation, either scheduled or unscheduled, may be conducted at the discretion of the Director OCHAMPUS, or a designee. The final determination regarding approval, reapproval, or disapproval of a facility will be provided in writing to the facility and the appropriate CHAMPUS fiscal intermediary.

(iii) *Surveying of facilities.* The surveying of newly established institutional providers and the periodic resurveying of all authorized institutional providers is a continuing process conducted by OCHAMPUS.

(iv) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution, OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution.

(A) *Minor violations.* An institution determined to be in minor violation of one or more of the standards shall be advised by certified mail of the nature of the discrepancy or discrepancies and will be given a grace period of not less than 30 days to effect appropriate corrections.

(*1*) CHAMPUS will not cost-share on any beneficiary admitted during the grace period.

(*2*) Any beneficiaries already in the institution (or their sponsors) shall be notified in writing of the minor violations and the grace period granted to the institution to correct them.

(*3*) If the institution notifies OCHAMPUS (in writing) before the end of the grace period that corrective action has been taken, those beneficiaries in the institution (or their sponsors) will be notified and benefits continued (assuming the case is otherwise covered). Also, for any beneficiary admitted during the grace period, benefits may begin to be extended (if the case is otherwise covered) as of 12:01 a.m. on the day notice of correction is received by OCHAMPUS.

(*4*) If the institution has not notified OCHAMPUS in writing before the end of the grace period that corrective action has been completed, the Director, OCHAMPUS, or a designee, may terminate CHAMPUS approval as an authorized institution.

(B) *Major violations.* A determination that an institution is in major violation of standards significantly detrimental to life, safety, and health, or substantially in violation of approved treatment programs, will result in immediate termination as an authorized institution. The institution shall be notified of the termination by telegram or certified mail. Such notice shall include the nature of the violations.

(C) *Notice to beneficiary or sponsor upon termination of approval as an authorized institutional provider.* When approval as an authorized institutional provider is terminated, any beneficiary in the institution or the sponsor shall be notified by certified mail of such action at the same time the institution is notified. Notice to the beneficiary or sponsor also shall include the nature of the noncompliance violations that resulted in the termination. CHAMPUS benefits may be continued for those cases already approved for benefits for an interim period of up to the last day of the month following the month in which approval of the institution was terminated.

(D) *Reinstatement as an authorized institutional provider.* Any institution that has its approval as an authorized institutional provider terminated because of noncompliance with CHAMPUS standards or approved treatment program may reapply to the Director, OCHAMPUS, or a designee, for approval. However, reapproval cannot be granted until an onsite facility review is conducted.

(4) *Categories of institutional providers.* The following categories of institutional providers may be reimbursed by CHAMPUS for services provided CHAMPUS beneficiaries subject to any and all definitions, conditions, limitation, and exclusions specified or enumerated in this part.

(i) *Hospitals, acute care, general and special.* An institution that provides inpatient services, that also may provide outpatient services (including clinical and ambulatory surgical services), and that:

(A) Is engaged primarily in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the medical or surgical diagnosis and treatment of illness, injury, or bodily malfunction (including maternity).

(B) Maintains clinical records on all inpatients (and outpatients if the facility operates an outpatient department or emergency room).

(C) Has bylaws in effect with respect to its operations and medical staff.

(D) Has a requirement that every patient be under the care of a physician.

(E) Provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times.

(F) Has in effect a hospital utilization review plan that is operational and functioning.

(G) In the case of an institution in a state in which state or applicable local law provides for the licensing of hospitals, the hospital:

(*1*) Is licensed pursuant to such law, or

(*2*) Is approved by the agency of such state or locality responsible for licensing hospitals as meeting the standards established for such licensing.

(H) Has in effect an operating plan and budget.

(I) Is accredited by the JCAH or meets such other requirements as the Secretary of Health and Human Services, the Secretary of Transportation, or the Secretary of Defense finds necessary in the interest of the health and safety of patients who are admitted to and furnished services in the institution.

(ii) *Hospitals, psychiatric.* A psychiatric hospital is an institution which is engaged primarily in providing services to inpatients for the diagnosis and treatment of mental disorders.

(A) There are two major categories of psychiatric hospitals:

(*1*) The private psychiatric hospital category includes both proprietary and the not-for-profit nongovernmental institutions.

(*2*) The second category is those psychiatric hospitals that are controlled, financed, and operated by departments or agencies of the local, state, or Federal Government and always are operated on a not-for-profit basis.

(B) In order for the services of a psychiatric hospital to be covered, the hospital shall comply with the provisions outlined in paragraph (b)(4)(i) of this section. All psychiatric hospitals shall be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS. In the case of those psychiatric hospitals that are not JCAH-accredited because they have not been in operation a sufficient period of time to be eligible to request an accreditation survey by the JCAH, the Director, OCHAMPUS, or a designee, may grant temporary approval if the hospital is certified and participating under Title XVIII of the Social Security Act (Medicare, Part A). This temporary approval expires 12 months from the date on which the psychiatric hospital first becomes eligible to request an accreditation survey by the JCAH.

(C) Factors to be considered in determining whether CHAMPUS will cost-share care provided in a psychiatric hospital include, but are not limited to, the following considerations:

(*1*) Is the prognosis of the patient such that care provided will lead to resolution or remission of the mental illness to the degree that the patient is of no danger to others, can perform routine daily activities, and can be expected to function reasonably outside the inpatient setting?

(*2*) Can the services being provided be provided more economically in another facility or on an outpatient basis?

(*3*) Are the charges reasonable?

(*4*) Is the care primarily custodial or domiciliary? (Custodial or domiciliary care of the permanently mentally ill or retarded is not a benefit under the Basic Program.)

(iii) *Hospitals, long-term (tuberculosis, chronic care, or rehabilitation).* To be considered a long-term hospital, an institution for patients that have tuberculosis or chronic diseases must be an institution (or distinct part of an institution) primarily engaged in providing by or under the supervision of a physician appropriate medical or surgical services for the diagnosis and active treatment of the illness or condition in which the institution specializes.

(A) In order for the service of long-term hospitals to be covered, the hospital must comply with the provisions outlined in paragraph (b)(4)(i) of this section. In addition, in order for services provided by such hospitals to be covered by CHAMPUS, they must be primarily for the treatment of the presenting illness.

(B) Custodial or domiciliary care is not coverable under CHAMPUS, even if rendered in an otherwise authorized long-term hospital.

(C) The controlling factor in determining whether a beneficiary's stay in a long-term hospital is coverable by CHAMPUS is the level of professional care, supervision, and skilled nursing care that the beneficiary requires, in addition to the diagnosis, type of condition, or degree of functional limitations. The type and level of medical services required or rendered is controlling for purposes of extending CHAMPUS benefits; not the type of provider or condition of the beneficiary.

(iv) *Skilled nursing facility.* A skilled nursing facility is an institution (or a distinct part of an institution) that is engaged primarily in providing to inpatients medically necessary skilled nursing care, which is other than a nursing home or intermediate facility, and which:

(A) Has policies that are developed with the advice of (and with provisions for review on a periodic basis by) a group of professionals, including one or more physicians and one or more registered nurses, to govern the skilled nursing care and related medical services it provides.

(B) Has a physician, a registered nurse, or a medical staff responsible for the execution of such policies.

(C) Has a requirement that the medical care of each patient must be under the supervision of a physician, and provides for having a physician available to furnish necessary medical care in case of an emergency.

(D) Maintains clinical records on all patients.

(E) Provides 24-hour skilled nursing service that is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (b)(4)(iv)(A) of this section, and has at least one registered professional nurse employed full-time.

(F) Provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

(G) Has in effect a utilization review plan that is operational and functioning.

(H) In the case of an institution in a state in which state or applicable local law provides for the licensing of this type facility, the institution:

(*1*) Is licensed pursuant to such law, or

(*2*) Is approved by the agency of such state or locality responsible for licensing such institutions as meeting the standards established for such licensing.

(I) Has in effect an operating plan and budget.

(J) Meets such provisions of the most current edition of the Life Safety Code[*] as are applicable to nursing facilities; except that if the Secretary of Health and Human Services has waived, for such periods, as deemed appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a nursing facility.

(v) *Residential treatment centers.* A residential treatment center (RTC) is a facility or distinct part of a facility that provides, to children and adolescents, a total, 24-hour therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place. An RTC is organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active treatment (that is, for whom it can reasonably be assumed that treatment of the mental disorder will result in an improved ability to function outside the RTC), for whom outpatient treatment is not appropriate, and for whom a protected and structured environment is medically or psychologically necessary.

(A) In order for the services of an RTC to be authorized, the RTC shall:

(*1*) Be accredited by the Joint Committee on Accreditation of Hospitals under the Commission Standards for Psychiatric Facilities Serving Children and Adolescents; and

(*2*) Comply with the Standards for Residential Child Care, developed by the Interstate Consortium on Residential Child Care, as required by the Director, OCHAMPUS, or a designee;

(*3*) Comply with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS;

(*4*) Have entered into a Participation Agreement with OCHAMPUS within which the RTC agrees, in part, to:

(*i*) Accept payment for its services based on an allowable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS;

---

[*] Compiled and published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(*ii*) Furnish OCHAMPUS with cost data certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*iii*) Accept the CHAMPUS-determined rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*iv*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.4;

(*v*) Permit access by the Director, OCHAMPUS, to clinical records of CHAMPUS beneficiaries and to the financial and organizational records of the facility;

(*vi*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*vii*) Submit claims for services provided to CHAMPUS beneficiaries at least every 30 days. If claims are not submitted at least every 30 days, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(B) The RTC shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the RTC until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

NOTE: Each RTC shall enter into a participation agreement as described in paragraph (b)(4)(v)(A)(*4*), by October 1, 1985. An RTC that was a CHAMPUS-authorized provider as of September 14, 1984, and that otherwise meets the requirements of paragraphs (b)(4)(v)(A)(*1*) through (*3*) and (b)(4)(v)(C) will continue to be authorized until the participation agreement is signed or October 1, 1985, whichever occurs first

(C) Even though an RTC may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for a particular admission is contingent upon certain conditions:

(*1*) The child seeking admission is suffering from a mental disorder which meets the diagnostic criteria of the DSM-III and meets the CHAMPUS definition of a mental disorder in § 199.2.

(*2*) The child meets the criteria for admission to an RTC issued by the Director, OCHAMPUS.

(*3*) A psychiatrist or other physician or a clinical psychologist shall recommend that the child be admitted to the RTC.

(*4*) A psychiatrist or a clinical psychologist shall direct the development of the child's treatment plan.

(*5*) All services shall be provided by or under the supervision of a qualified mental health provider (refer to paragraph (c)(3)(ix) of § 199.4).

(vi) *Christian Science sanatoriums.* The services obtained in Christian Science sanatoriums are covered by CHAMPUS as inpatient care. To qualify for coverage, the sanatorium either must be operated by, or be listed and certified by the First Church of Christ, Scientist.

(vii) *Infirmaries.* Infirmaries are facilities operated by student health departments of colleges and universities to provide inpatient or outpatient care to enrolled students. Charges for care provided by such facilities will not be cost-shared by CHAMPUS if the student would not be charged in the absence of CHAMPUS, or if student is covered by a mandatory student health insurance plan, in which enrollment is required as a part of the student's school registration and the charges by the college or university include a premium for the student health insurance coverage. CHAMPUS will cost-share only if enrollment in the student health program or health insurance plan is voluntary.

NOTE: An infirmary in a boarding school also may qualify under this provision, subject to review and approval by the Director, OCHAMPUS or a designee.

(viii) *Other STFs*—(A) *General.* (*1*) Care provided by certain STFs (on either an inpatient or outpatient basis), other than those listed above,

BEST COPY AVAILABLE

may be cost-shared by CHAMPUS under specified circumstances.

(*i*) The course of treatment is prescribed by a doctor of medicine or osteopathy.

(*ii*) The patient is under the supervision of a physician during the entire course of the inpatient admission or the outpatient treatment.

(*iii*) The type and level of care and service rendered by the institution are otherwise authorized by this part.

(*iv*) The facility meets all licensing or other certification requirements that are extant in the jurisdiction in which the facility is located geographically.

(*v*) Is other than a nursing home, intermediate care facility, home for the aged, halfway house, or other similar institution.

(*vi*) Is accredited by the JCAH or other CHAMPUS-approved accreditation organization, if an appropriate accreditation program for the given type of facility is available. As future accreditation programs are developed to cover emerging specialized treatment programs, such accreditation will be a prerequisite to coverage by CHAMPUS for services provided by such facilities.

(*2*) To ensure that CHAMPUS beneficiaries are provided quality care at a reasonable cost when treated by a STF, the Director, OCHAMPUS, or a designee, will retain the right to:

(*i*) Require prior approval of all admissions to specialized inpatient treatment facilities.

(*ii*) Set appropriate standards for STFs in addition to or in the absence of JCAH accreditation.

(*iii*) Monitor facility operations and treatment programs on a continuing basis and conduct onsite inspections on a scheduled and unscheduled basis.

(*iv*) Negotiate agreements of participation.

(*v*) Terminate approval of a case when it is ascertained that a departure from the facts upon which the admission was based originally has occurred.

(*vi*) Declare an STF not eligible for CHAMPUS payment if that facility has been found to have engaged in fraudulent or deceptive practices.

(*3*) In general, the following disclaimers apply to treatment by STFs:

(*i*) Just because one period or episode of treatment by a facility has been covered by CHAMPUS may not be construed to mean that later episodes of care by the same or similar facility will be covered automatically.

(*ii*) The fact that one case has been authorized for treatment by a specific facility or similar type of facility may not be construed to mean that similar cases or later periods of treatment will be extended CHAMPUS benefits automatically.

(B) *Types of providers.* The following is a list of facilities that have been designated specifically as STFs. The list is for example only and is not to be construed as being all-inclusive.

(*1*) *Free-standing ambulatory surgical centers.* Care provided by freestanding ambulatory surgical centers may be cost-shared by CHAMPUS under the following circumstances:

(*i*) The treatment is prescribed and supervised by a physician.

(*ii*) The type and level of care and services rendered by the center are otherwise authorized by this part.

(*iii*) The center meets all licensing or other certification requirements of the jurisdiction in which the facility is located.

(*iv*) The center is accredited by the JCAH, the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), or such other standards as authorized by the Director, OCHAMPUS.

(*2*) *PFTH facilities.* STFs also include facilities that seek approval to provide care authorized under the PFTH. (Refer to § 199.5 of this part.)

(*3*) *Alcohol rehabilitation facilities.* In order to be authorized under CHAMPUS as a provider of alcohol detoxification, rehabilitative services, outpatient treatment, and family therapy, alcohol rehabilitation facilities, both freestanding facilities and hospital-based facilities, shall operate primarily for the purpose of providing alcoholism treatment (on either an inpatient (including partial care) or an outpatient basis) and shall meet the following criteria:

(*i*) The course of treatment shall be prescribed by and supervised by a qualified mental health provider (refer to § 199.4(c)(3)(ix)) practicing

BEST COPY AVAILABLE

within the scope of his or her license. When indicated by the patient's physical status, the patient shall be under the general supervision of a physician.

(*ii*) The type and level of care provided by the facility are otherwise authorized by this part.

(*iii*) The facility shall meet all licensing and other certification requirements of the jurisdiction in which the facility is located.

(*iv*) The facility shall be accredited by the JCAH or shall meet such other requirements as the Director, OCHAMPUS, finds necessary in the interest of the health and safety of the individuals who are furnished services in the facility.

(*v*) The facility shall have entered into a participation agreement with OCHAMPUS within which the facility agrees, in part, to:

(*aa*) Accept payment for its services based on an allowable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS;

(*bb*) Furnish OCHAMPUS with cost data certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*cc*) Accept the CHAMPUS-determined rate as payment in full and to collect from the CHAMPUS beneficiary those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*dd*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.4;

(*ee*) Permit access by the Director, OCHAMPUS, to clinical records of CHAMPUS beneficiaries and to the financial and organizational records of the facility;

(*ff*) Comply with the provisions of § 199.8, and to submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS.

(*vi*) The alcoholism rehabilitation facility shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the alcoholism rehabilitation facility until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

NOTE.—Each alcoholism rehabilitation facility shall enter into a participation agreement as described in paragraph (b)(4)(viii)(B)(*3*)(*v*) by October 1, 1985. An alcoholism rehabilitation facility that was a CHAMPUS-authorized provider as of September 14, 1984, and that otherwise meets the requirements of paragraph (b)(4)(viii)(B)(*3*)(*i*) through (*iv*) will continue to be authorized until the participation agreement is signed or October 1, 1985, whichever occurs first.

(c) *Individual professional providers of care*—(1) *General.* Individual professional providers of care are those providers who bill for their services on a fee-for-service basis and are not employed or contracted with by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under § 301.7701-5 of the Internal Revenue Service regulations. Such individual professional providers must be licensed by the local licensing agency for the jurisdiction in which the care is provided; or in the absence of licensure be certified by or be eligible for membership in the appropriate national or professional association that sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms.

(i) *Licensing required, scope of license.* Otherwise covered services shall be cost-shared only if the individual professional provider holds a current, valid license to practice his or her profession (or otherwise is authorized legally to practice) required in the jurisdiction where the service is rendered. Such services must be within the scope of the license or other legal authorization.

(ii) *Monitoring required.* The Director, OCHAMPUS, or a designee, shall develop appropriate monitoring programs and issues guidelines, criteria, or norms necessary to ensure that

CHAMPUS expenditures are limited to necessary medical supplies and services at the most reasonable cost to the government and beneficiary. The Director, OCHAMPUS, or a designee, also will take such steps as necessary to deter overutilization of services.

(iii) *Christian Science.* Christian Science practitioners and Christian Science nurses are authorized to provide services under CHAMPUS. Inasmuch as they provide services of an extramedical nature, the general criteria outlined above do not apply to Christian Science services (refer to paragraph (c)(3)(iv)(B) regarding services of Christian Science practitioners and nurses).

(2) *Interns and residents.* Interns and residents may not be paid directly by CHAMPUS for services rendered to a beneficiary when their services are provided as part of their employment (either salaried or contractual) by a hospital or other institutional provider.

(3) *Types of providers.* Subject to the standards of participation provisions of this part, the following individual professional providers of medical care are authorized to provide services to CHAMPUS beneficiaries:

(i) *Physicians.* (A) Doctors of Medicine (M.D.).

(B) Doctors of Osteopathy (D.O.).

(ii) *Dentists.* Except for covered oral surgery as specified in § 199.4(e) of this part, all otherwise covered services rendered by dentists require preauthorization.

(A) Doctors of Dental Medicine (D.M.D.).

(B) Doctors of Dental Surgery (D.D.S.).

(iii) *Other allied health professionals.* The services of the following individual professional providers of care are coverable on a fee-for-service basis provided such services are otherwise authorized in this or other sections of this part.

(A) *Clinical psychologist.* For purposes of CHAMPUS, a clinical psychologist is an individual who:

(*1*) Is licensed or certified by the state for the independent practice of psychology; and

(*2*) Possesses a doctoral degree in psychology from a regionally accredited university; and

(*3*) Has had 2 years of supervised clinical experience in psychological health services of which at least 1 year is post-doctoral and 1 year (may be the post-doctoral year) is in an organized psychological health service training program; or

(*4*) Is listed in the National Register of Health Service Providers in Psychology.[9]

(B) *Doctors of Optometry.*

(C) *Doctors of Podiatry or Surgical Chiropody.*

(D) *Certified nurse midwives.*

(*1*) A certified nurse midwife may provide covered care independent of physician referral and supervision, provided the nurse midwife is:

(*i*) Licensed, when required, by the local licensing agency for the jurisdiction in which the care is provided; and

(*ii*) Certified by the American College of Nurse Midwives. To receive certification, a candidate must be a registered nurse who has completed successfully an educational program approved by the American College of Nurse Midwives, and passed the American College of Nurse Midwives National Certification Examination.

(*2*) The services of a registered nurse who is not a certified nurse midwife may be authorized only when the patient has been referred for care by a licensed physician and a licensed physician provides continuing supervision of the course of care. A lay midwife who is neither a certified nurse midwife nor a registered nurse is not a CHAMPUS-authorized provider, regardless of whether the services rendered may otherwise be covered.

(E) *Certified nurse practitioner.* Within the scope of applicable licensure or certification requirements, a certified nurse practitioner may provide covered care independent of physician referral and supervision, provided the nurse practitioner is:

(*1*) A licensed, registered nurse; and

---

[9] Compiled and published by the Council for the National Register of Health Service Providers in Psychology, 1200 17th Street, N.W., Suite 500, Washington, D.C. 20036.

(*2*) Specifically licensed or certified as a nurse practitioner by the state in which the care was provided, if the state offers such specific licensure or certification; or

(*3*) Certified as a nurse practitioner (certified nurse) by a professional organization offering certification in the speciality of practice, if the state does not offer specific licensure or certification for nurse practitioners.

(F) *Certified Clinical Social Worker.* A clinical social worker may provide covered services independent of physician referral and supervision, provided the clinical social worker:

(*1*) Is licensed or certified as a clinical social worker by the jurisdiction where practicing; or, if the jurisdiction does not provide for licensure or certification of clinical social workers, is certified by a national professional organization offering certification of clinical social workers; and

(*2*) Has at least a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; and

(*3*) Has had a minimum of 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate clinical setting, as determined by the Director, OCHAMPUS, or a designee.

NOTE: Patients' organic medical problems must receive appropriate concurrent management by a physician.

(G) *Certified psychiatric nurse specialist.* A certified psychiatric nurse specialist may provide covered care independent of physician referral and supervision. For purposes of CHAMPUS, a certified psychiatric nurse specialist is an individual who:

(1) Is a licensed, registered nurse; and

(*2*) Has at least a master's degree in nursing with a specialization in psychiatric and mental health nursing; and

(*3*) Has had at least 2 years of post-master's degree practice in the field of psychiatric and mental health nursing, including an average of 8 hours of direct patient contact per week; or

(*4*) Is listed in a CHAMPUS-recognized, professionally sanctioned listing of clinical specialists in psychiatric and mental health nursing.

(H) *Other individual paramedical providers.* The services of the following individual professional providers of care to be considered for benefits on a fee-for-service basis may be provided only if the beneficiary is referred by a physician for the treatment of a medically-diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual para-medical providers.

(*1*) Licensed registered nurses.

(*2*) Licensed practical or vocational nurses.

(*3*) Licensed registered physical therapists.

(*4*) Audiologists.

(*5*) Speech therapists (speech pathologists).

(iv) *Extramedical individual providers.* Extramedical individual providers are those who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field.

(A) *Marriage and family counselors or pastoral counselors.* The services of certain extramedical marriage and family counselors or pastoral counselors are coverable on a fee-for-service basis, under the following specified conditions:

(*1*) The CHAMPUS beneficiary must be referred for therapy by a physician.

(*2*) A physician is providing ongoing oversight and supervision of the therapy being provided.

(*3*) The marriage and family counselor or the pastoral counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communications will be made at the end of the treatment or more frequently, if required by the referring physician (refer to § 199.7 of this part).

(*4*) These providers shall have the following:

(*i*) Recognized graduate professional education with the minimum of an earned master's degree from an accredited educational institution in an appropriate behavioral science field or mental health discipline.

(*ii*) The following experience:

(*aa*) Either 200 hours of approved supervision in the practice of marriage and family counseling or pastoral counseling, ordinarily to be completed in a 2- to 3-year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferably with more than one supervisor and should include a continuous process of supervision with at least three cases, and

(*bb*) 1,000 hours of clinical experience in the practice of marriage and family counseling or pastoral counseling under approved supervision, involving at least 50 different cases; or

(*cc*) 150 hours of approved supervision in the practice of psychotherapy, ordinarily to be completed in a 2- to 3-year period, of which at least 50 hours must be individual supervision; plus at least 50 hours of approved individual supervision in the practice of marriage and family counseling or pastoral counseling, ordinarily to be completed within a period of not less than 1 nor more than 2 years, and

(*dd*) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases; plus at least 250 hours of clinical practice in marriage and family counseling or pastoral counseling under approved supervision, involving at least 20 cases, and

(*iii*) Possessions of a valid state license or certificate as a marriage and family counselor or pastoral counselor, or a license or certificate that allows the counselor to provide therapy in states that require such licensing or certification.

(B) *Christian Science practitioners and Christian Science nurses.* CHAMPUS cost shares the services of Christian Science practitioners and nurses. In order to bill as such, practitioners or nurses must be listed or be eligible for listing in the *Christian Science Journal* at the time the service is provided.

(d) *Other providers.* Certain medical supplies and services of an ancillary or supplemental nature are coverable by CHAMPUS, subject to certain controls. This category of provider includes the following:

(1) *Independent laboratory.* Laboratory services of independent laboratories may be cost-shared if the laboratory is approved for participation under Medicare and certified by the Medicare Bureau, Health Care Financing Administration.

(2) *Suppliers of portable x-ray services.* Such suppliers must meet the conditions of coverage of the Medicare program, set forth in the Medicare regulations, or the Medicaid program in that state in which the covered service is provided.

(3) *Pharmacies.* Pharmacies must meet the applicable requirements of state law in the state in which the pharmacy is located.

(4) *Ambulance companies.* Such companies must meet the requirements of state and local laws in the jurisdiction in which the ambulance firm is licensed.

(5) *Medical equipment firms, medical supply firms.* As determined by the Director, OCHAMPUS, or a designee.

(e) *Provider reimbursement methods.*—(1) *Hospitals and SNFs.* The CHAMPUS-determined allowable costs for reimbursement of a hospital or SNF shall be determined on the basis of one of the following methodologies, that is, whichever is in effect at a specific hospital or SNF at the time covered services or supplies are provided to a CHAMPUS beneficiary.

(i) *Billed charges and set rates.* The allowable costs for authorized care may not exceed the lower of:

(A) The actual charge for such service made to the general public; or

(B) The allowed charge applicable to the policyholders or subscribers of the CHAMPUS fiscal intermediary for comparable services under comparable circumstances, when extended to CHAMPUS beneficiaries by consent or agreement; or

(C) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority, excluding title XIX of the Social Security Act or other welfare program, when extended to CHAMPUS beneficiaries by consent or agreement.

(ii) *Cost-related reimbursement.* The Director, OCHAMPUS, or a designee, shall, subject to the approval of the ASD(HA), establish a cost-reimbursement method similar to that used for reimbursement of institutional providers under title XVIII of the Social Security Act (generally known as the Ratio of Charge to Charge Applied to Costs (RCCAC) method).

(iii) *Prospective reimbursement.* The Director, OCHAMPUS, or a designee, subject to the approval of the ASD(HA), shall develop an alternative reimbursement method utilizing a prospective payment concept.

(2) *Reimbursement for other than hospitals and SNFs.* The Director, OCHAMPUS, or a designee, shall establish such other methods of determining allowable cost or charge reimbursement for those institutions, other than hospitals and SNFs, as may be required.

(3) *Reimbursement of freestanding ambulatory surgical centers.* Authorized care furnished by freestanding ambulatory surgical centers shall be reimbursed on the basis of the CHAMPUS-determined reasonable cost.

(4) *Reimbursement of individual health-care professionals and other noninstitutional health-care providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other noninstitutional health-care provider shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(i) *Allowable charge method.* The allowable charge method is the preferred and primary method for reimbursement of individual health-care professionals and other noninstitutional health-care providers.

(A) The allowable charge for authorized care shall be the lower of:

(*1*) The billed charge for the service;

(*2*) The prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the based period.

NOTE: Pub. L. 97-86 provides that prevailing charges are to be determined at the 90th percentile. However, DoD Appropriation Acts have limited this to the 80th percentile. Prevailing charges shall continue to be calculated in accordance with any limitations set forth in the DoD Appropriation Acts, as implemented in instructions issued by the Director, OCHAMPUS.

(*i*) The 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS, or a designee.

(*ii*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year.

(B) A charge that exceeds the prevailing charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(ii) *Alternative method.* The Director, OCHAMPUS, or a designee, may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to ensure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods may not result in reimbursement greater than the allowable charge method above.

(5) *Outside the United States.* The Director, OCHAMPUS, or a designee, shall determine the appropriate reimbursement method or methods to be used in the extension of CHAMPUS benefits for otherwise covered medical services or supplies provided by hospitals or other institutional providers, physicians or other individual professional providers, or other providers outside the United States.

(f) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, and guidelines, as may be necesssary to implement the intent of this section.

§ 199.7 Claims submission, review, and payment.

(a) *General.* The Director, OCHAMPUS, or a designee, is responsible for ensuring that benefits under CHAM-

PUS are paid only to the extent described in this part. Before benefits can be paid, and appropriate claim must be submitted that includes sufficient information as to beneficiary identification, the medical services and supplies provided, and double coverage information, to permit proper, accurate, and timely adjudication of the claim by the CHAMPUS fiscal intermediary or OCHAMPUS. Subject to such definitions, conditions, limitations, exclusions, and requirements as may be set forth in this part, the following are the CHAMPUS claim filing requirements:

(1) *CHAMPUS identification card required.* A patient shall present his or her applicable CHAMPUS identification card (that is, Uniformed Services identification card) to the authorized provider of care that identifies the patient as an eligible CHAMPUS beneficiary (refer to § 199.3 of this part).

(2) *Claim required.* No benefit may be extended under the Basic Program or PFTH without the submission of a complete and properly executed appropriate claim form.

(3) *Responsibility for perfecting claim.* It is the responsibility of the CHAMPUS beneficiary or sponsor or the authorized provider acting on behalf of the CHAMPUS beneficiary to perfect a claim for submission to the appropriate CHAMPUS fiscal intermediary. Neither a CHAMPUS fiscal intermediary nor OCHAMPUS is authorized to prepare a claim on behalf of a CHAMPUS beneficiary.

(4) *Obtaining appropriate claim form.* CHAMPUS provides specific CHAMPUS forms appropriate for making a claim for benefits for various types of medical services and supplies (such as hospital, physician, or prescription drugs). Claim forms may be obtained from the appropriate CHAMPUS fiscal intermediary who processes claims for the beneficiary's state of residence, from the Director, OCHAMPUS, or a designee, or from CHAMPUS health benefits advisors (HBAs) located at all Uniformed Services medical facilities.

(5) *Prepayment not required.* A CHAMPUS beneficiary or sponsor is not required to pay for the medical services or supplies before submitting a claim for benefits.

(6) *Deductible certificate.* If the fiscal year outpatient deductible has been met by a beneficiary ($50) or a family ($100 aggregate) through the submission of a claim or claims to a CHAMPUS fiscal intermediary in a geographic location different from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable individual or family fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second individual or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in this paragraph (a)(6) of this section, is supplied to the CHAMPUS fiscal intermediary applying the second deductible (refer to paragraph (f) of § 199.4 of this part).

(7) *Nonavailability Statement (DD Form 1251).* In some geographic locations or under certain circumstances, it is necessary for a CHAMPUS beneficiary to determine whether the required medical care can be provided through a Uniformed Services facility. If the required medical care cannot be provided by the Uniformed Services facility, a Nonavailability Statement will be issued. When requried (except for emergencies), this Nonavailability Statement must be issued before medical care is obtained from civilian sources. Failure to secure such a statement will waive the beneficiary's rights to benefits under CHAMPUS, subject to appeal to the appropriate hospital commander (or higher medical authority).

(i) *Rules applicable to issuance of Nonavailability Statement.* The ASD(HA) has issued DoD Instruction 6015.19 that contains rules for the issuance of Nonavailability Statements. Such rules may change depending on the current situations.

(ii) *Beneficiary responsibility.* The beneficiary shall ascertain whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules may be obtained from the CHAMPUS fiscal intermediary concerned, a CHAMPUS HBA or the Director, OCHAMPUS, or a designee.

(iii) *Rules in effect at time civilian care is provided apply.* The applicable rules regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a Nonavailability Statement is required.

(iv) *Nonavailability Statement must be filed with applicable claim.* When a claim is submitted for CHAMPUS benefits that includes services for which a Nonavailability Statement is required, such statement must be submitted along with the claim form.

(b) *Information required to adjudicate a CHAMPUS claim.* Claims received that are not completed fully and that do not provide the following minimum information may be returned. If enough space is not available on the appropriate claim form, the required information must be attached separately and include the patient's name and address, be dated, and signed.

(1) *Patient's identification information.* The following patient identification information must be completed on every CHAMPUS claim form submitted for benefits before a claim will be adjudicated and processed:

(i) *Patient's full name.*

(ii) *Patient's residence address.*

(iii) *Patient's date of birth.*

(iv) *Patient's relationship to sponsor.*

NOTE.—If name of patient is different from sponsor, explain (for example, stepchild or illegitimate child).

(v) *Patient's identification number (from DD Form 1173).*

(vi) *Patient's identification card effective date and expiration date (from DD Form 1173).*

(vii) *Sponsor's full name.*

(viii) *Sponsor's service or social security number.*

(ix) *Sponsor's grade.*

(x) *Sponsor's organization and duty station.* Home port for ships; home address for retiree.

(xi) *Sponsor's branch of service or deceased or retiree's former branch of service.*

(xii) *Sponsor's current status.* Active duty, retired, or deceased.

(2) *Patient treatment information.* The following patient treatment information routinely is required relative to the medical services and supplies for which a claim for benefits is being made before a claim will be adjudicated and processed:

(i) *Diagnosis.* A detailed diagnosis is required; standard nomenclature is acceptable. In the absence of a diagnosis, a narrative description of the definitive set of symptoms for which the medical care was rendered must be provided.

(ii) *Source of care.* Full name of source of care (such as hospital or physician) providing the specific medical services being claimed.

(iii) *Full address of source of care.* This address must be where the care actually was provided, not a billing address.

(iv) *Attending physician.* Name of attending physician (or other authorized individual professional provider).

(v) *Referring physician.* Name and address of ordering, prescribing, or referring physician.

(vi) *Status of patient.* Status of patient at the time the medical services and supplies were rendered (that is, inpatient or outpatient).

(vii) *Dates of service.* Specific and inclusive dates of service.

(viii) *Inpatient stay.* Source and dates of related inpatient stay (if applicable).

(ix) *Physicians or other authorized individual professional providers.* For services provided by physicians (or other authorized individual professional providers), the following information also must be included:

(A) Date of each service.

(B) Procedure code or narrative description of each procedure or service for each date of service.

(C) Individual charge for each item of service or each supply for each date.

(D) Detailed description of any unusual complicating circumstances related to the medical care provided that the physician or other individual professional provider may choose to submit separately.

(x) *Hospitals or other authorized institutional providers.* For care provided by hospitals (or other authorized institutional providers), the following information also must be provided before a claim will be adjudicated and processed:

(A) An itemized billing showing each item of service or supply provided for each day covered by the claim.

NOTE: The Director, OCHAMPUS, or a designee, may approve, in writing, an alternative billing procedure for RTCs or other special institutions, in which case the itemized billing requirement may be waived. The particular facility will be aware of such approved alternate billing procedure.

(B) Any absences from a hospital or other authorized institution during a period for which inpatient benefits are being claimed must be identified specifically as to date or dates and provide details on the purpose of the absence. Failure to provide such information will result in denial of benefits and, in an ongoing case, termination of benefits for the inpatient stay at least back to the date of the absence.

(xi) *Prescription drugs and medicines (and insulin).* For prescription drugs and medicines (and insulin, whether or not a prescription is required) receipted bills must be attached and the following additional information provided:

(A) Name of drug.

NOTE.—When the physician or pharmacist so requests, the name of the drugs may be submitted to the CHAMPUS fiscal intermediary directly by the physician or pharmacist.

(B) Strength of drug.

(C) Name and address of pharmacy where drug was purchased.

(D) Prescription number of drug being claimed.

(xii) *Other authorized providers.* For items from other authorized providers (such as medical supplies), an explanation as to the medical need must be attached to the appropriate claim form. For purchases of durable equipment under the PFTH, it is necessary also to attach a copy of the preauthorization.

(xiii) *Nonparticipating providers.* When the beneficiary or sponsor submits the claim to the CHAMPUS fiscal intermediary (that is, the provider elects not to participate), an itemized bill from the provider to the beneficiary or sponsor must be attached to the CHAMPUS claim form.

(3) *Double coverage information.* When the CHAMPUS beneficiary is eligible for medical benefits coverage through another plan, insurance, or program, either private or Government, the following information must be provided:

(i) *Name of other coverage.* Full name and address of double coverage plan, insurance, or program (such as Blue Cross, Medicare, commercial insurance, and state program).

(ii) *Source of double coverage.* Source of double coverage (such as employment, including retirement, private purchase, membership in a group, and law).

(iii) *Employer information.* If source of double coverage is employment, give name and address of employer.

(iv) *Indentification number.* Identification number or group number of other coverage.

(4) *Right to additional information.* (i) As a condition precedent to the provision of benefits under this part, OCHAMPUS or CHAMPUS fiscal intermediaries may request and shall be entitled to receive information from a physician or hospital or other person, institution, or organization (including a local, state, or Federal Government agency) providing services or supplies to the beneficiary for whom claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, examination, diagnosis, treatment, or services and supplies furnished to a beneficiary and as shall be necessary for the accurate and efficient administration of CHAMPUS benefits. In addition, before a determination on a request for preauthorization or claim of benefits is made, a beneficiary, or sponsor, shall provide additional information relevant to the requested determination, when necessary. The recipient of such information shall hold such records confidential except when:

(A) Disclosure of such information is authorized specifically by the beneficiary;

(B) Disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions; or

(C) Disclosure is authorized or required specifically under the terms of DoD Directive 5400.7 and 5400.11, the Freedom of Information Act, and the Privacy Act (refer to paragraph (m) of § 199.1 of this part).

(ii) For the purposes of determining the applicability of and implementing the provisions of §§ 199.8, 199.11 and 199.12, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries, without consent or notice to any beneficiary or sponsor, may release to or obtain from any insurance company or other organization, governmental agency, provider, or person, any information with respect to any beneficiary when such release constitutes a routine use duly published in the FEDERAL REGISTER in accordance with the Privacy Act. Before a beneficiary's claim of benefits will be adjudicated, the beneficiary must furnish to CHAMPUS that information which reasonably may be expected to be in his or her possession and which is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim

(c) *Signature on CHAMPUS Claim Form*—(1) *Beneficiary signature.* CHAMPUS claim forms must be signed by the beneficiary except under the conditions identified in paragraph (c)(1)(v) of this section. The parent or guardian may sign for any beneficiary under 18 years.

(i) *Certification of identity.* This signature certifies that the patient identification information provided is correct.

(ii) *Certification of medical care provided.* This signature certifies that the specific medical care for which benefits are being claimed actually were rendered to the beneficiary on the dates indicated.

(iii) *Authorization to obtain or release information.* Before requesting additional information necessary to process a claim or releasing medical information, the signature of the beneficiary who is 18 years old or older must be recorded on or obtained on the CHAMPUS claim form or on a separate release form. The signature of the beneficiary, parent, or guardian will be requested when the beneficiary is under 18 years.

(iv) *Certification of accuracy and authorization to release double coverage information.* This signature certifies to the accuracy of the double coverage information and authorizes the release of any information related to double coverage. (Refer to § 199.8 of this part).

(v) *Exceptions to beneficiary signature requirement.* (A) Except as required by paragraph (c)(1)(iii) of this section, the signature of a spouse, parent, or guardian will be accepted on a claim submitted for a beneficiary who is 18 years old or older.

(B) When the institutional provider obtains the signature of the beneficiary (or the signature of the parent or guardian when the beneficiary is under 18 years) on a CHAMPUS claim form at admission, the following participating claims may be submitted without the beneficiary's signature.

(*1*) Claims for laboratory and diagnostic tests and test interpretations from radiologists, pathologists, neurologists, and cardiologists.

(*2*) Claims from anesthesiologists.

(C) Claims filed by providers using CHAMPUS-approved signature-on-file and claims submission procedures.

(2) *Provider's signature.* The provider may elect on a claim-by-claim basis whether to participate and submit a CHAMPUS claim on behalf of a beneficiary. When the provider makes the election to participate, the provider is required to sign the CHAMPUS claim form.

(i) *Certification.* A participating provider's signature on a CHAMPUS claim form:

(A) Certifies that the specific medical care listed on the claim form was, in fact, rendered to the specific beneficiary for which benefits are being claimed on the specific date or dates indicated.

BEST COPY AVAILABLE

(B) Certifies that the provider has agreed to participate (providing this agreement has been indicated on the claim form) and that the CHAMPUS-determined allowable charge or cost will constitute the full charge or cost for the medical care listed on the specific claim form; and further agrees to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-shared amount paid by, or on behalf of the beneficiary, as full payment for the covered medical services or supplies.

(*1*) Thus, neither CHAMPUS nor the sponsor is responsible for any additional charges, whether or not the CHAMPUS-determined charge or cost is less than the billed amount.

(*2*) Any provider who signs and submits a CHAMPUS claim form and then violates this agreement by billing the beneficiary or sponsor for any difference between the CHAMPUS-determined charge or cost and the amount billed is acting in bad faith and is subject to penalties including withdrawal of CHAMPUS approval as a CHAMPUS provider by administrative action of the Director, OCHAMPUS, or a designee, and possible legal action on the part of CHAMPUS, either directly or as a part of a beneficiary action, to recover monies improperly obtained from CHAMPUS beneficiaries or sponsors (refer to § 199.6 of this part.)

(ii) *Physician or other authorized individual professional provider.* A physician or other authorized individual professional provider is liable for any signature submitted on his or her behalf. Further, a facsimile signature is not acceptable unless such facsimile signature is on file with, and has been authorized specifically by, the CHAMPUS fiscal intermediary serving the state where the physician or other authorized individual professional provider practices.

(iii) *Hospital or other authorized institutional provider.* The provider signature on a claim form for institutional services must be that of an authorized representative of the hospital or other authorized institutional provider, whose signature is on file with and approved by the appropriate CHAMPUS fiscal intermediary.

(d) *Claims filing deadline.* To be considered for benefits, all claims submitted under CHAMPUS must be filed with the appropriate CHAMPUS fiscal intermediary no later than December 31 of the calendar year immediately following the one in which the covered service or supply was rendered. Failure to file a claim timely waives automatically all rights to any benefits for such services or supplies provided during the period affected by the claims filing deadline.

(1) *Claims returned for additional information.* When a claim initially is submitted within the claims filing time limit, but is returned in whole or in part for additional information to be considered for benefits, the returned claim, along with the requested information, must be resubmitted and received by the appropriate CHAMPUS fiscal intermediary no later than the applicable December 31 deadline or 90 days from the date the claim was returned to the beneficiary, whichever is later.

(2) *Exception to claims filing deadline.* The Director, OCHAMPUS, or a designee, may grant exceptions to the claims filing deadline requirements.

(i) *Types of exception*—(A) *Retroactive eligibility.* Retroactive CHAMPUS eligibility determinations.

(B) *Administrative error.* Administrative error (that is, misrepresentation, mistake, or other accountable action) of an officer or employee of OCHAMPUS (including OCHAMPUSEUR) or a CHAMPUS fiscal intermediary, performing functions under CHAMPUS and acting within the scope of that official's authority.

(C) *Mental incompetency.* Mental incompetency of the beneficiary or guardian or sponsor, in the case of a minor child (which includes inability to communicate, even if it is the result of a physical disability).

(D) *Provider billings.* Direct billings by participating providers.

(E) *Delays by other health insurance.* When not attributable to the beneficiary, delays in adjudication by other health insurance companies when double coverage coordination is required before the CHAMPUS benefit determination.

(ii) *Request for exception to claims filing deadline.* Beneficiaries who wish to request an exception to the claims filing deadline may submit such a request to the CHAMPUS fiscal intermediary having jurisdiction over the location in which the service was rendered, or as otherwise designated by the Director, OCHAMPUS.

(A) Such requests for an exception must include a complete explanation of the circumstances of the late filing, together with all available documentation supporting the request, and the specific claim denied for late filing.

(B) Each request for an exception to the claims filing deadline is reviewed individually and considered on its own merits.

(e) *Other claims filing requirements.* Notwithstanding the claims filing deadline described in paragraph (d) of this section, to lessen any potential adverse impact on a CHAMPUS beneficiary or sponsor that could result from a retroactive denial, the following additional claims filing procedures are recommended or required.

(1) *Continuing care.* When medical services and supplies are being rendered on a continuing basis, an appropriate claim or claims shall be submitted every 30 days, whether submitted directly by the beneficiary or sponsor or by the provider on behalf of the beneficiary. Such claims may be submitted more frequently if the beneficiary or provider so elects. The Director, OCHAMPUS, or a designee, also may require more frequent claims submission based on dollars. Examples of care that may be rendered on a continuing basis are outpatient physical therapy, private duty (special) nursing, or inpatient stays.

(2) *Inpatient mental health services.* Under most circumstances, the 60-day inpatient mental health limit applies to the first 60 days of care paid in a calendar year. The patient will be notified when the first 30 days of inpatient mental health benefits have been paid. The beneficiary is responsible for assuring that all claims for care are submitted sequentially and on a regular basis. Once payment has been made for care determined to be medically appropriate and a program benefit, the decision will not be reopened solely on the basis that previous inpatient mental health care had been rendered but not yet billed during the same calendar year by a different provider.

(3) *Claims involving the services of marriage and family counselors or pastoral counselors.* CHAMPUS requires that marriage and family counselors or pastoral counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors or pastoral counselors must include a certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

(f) *Preauthorization.* When specifically required in other sections of this part, preauthorization requires the following:

(1) *Preauthorization must be granted before benefits can be extended.* In those situations requiring preauthorization, the request for such preauthorization shall be submitted and approved before benefits may be extended, except as provided in § 199.4(a)(11). If a claim for services or supplies is submitted without the required preauthorization, no benefits shall be paid, unless the Director, OCHAMPUS, or a designee, has granted an exception to the requirement for preauthorization.

(i) *Specifically preauthorized services.* An approved preauthorization specifies the exact services or supplies for which authorization is being given. In a preauthorization situation, benefits cannot be extended for services or supplies provided beyond the specific authorization.

(ii) *Time limit on preauthorization.* Approved preauthorizations are valid for specific periods of time, usually 90 days. If the preauthorized services or supplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended.

(2) *Treatment plan, management plan.* Each preauthorization request

shall be accompanied by a proposed medical treatment plan (for inpatient stays under the Basic Program) or management plan (for services under the PFTH) which shall include generally a diagnosis; a detailed summary of complete history and physical; a detailed statement of the problem; the proposed type and extent of treatment or therapy; the proposed treatment modality, including anticipated length of time the proposed modality will be required; any available test results, consultant's reports; and the prognosis. When the preauthorization request involves transfer from a hospital to another inpatient facility, medical records related to the inpatient stay also must be provided.

(3) *Durable equipment.* Requests for preauthorization to purchase durable equipment under the PFTH must list all items of durable equipment previously authorized under the PFTH and state whether the current item of equipment is the initial purchase or a replacement. If it is a replacement item, the date the initial item was purchased also shall be provided.

(4) *Claims for services and supplies that have been preauthorized.* Whenever a claim is submitted for benefits under CHAMPUS involving preauthorized services and supplies, the date of the approved preauthorization must be indicated on the claim form and a copy of the written preauthorization must be attached to the appropriate CHAMPUS claim.

(g) *Claims review.* It is the responsibility of the CHAMPUS fiscal intermediary (or OCHAMPUS, including OCHAMPUSEUR) to review each CHAMPUS claim submitted for benefit consideration to ensure compliance with all applicable definitions, conditions, limitations, or exclusions specified or enumerated in this part. It is also required that before any CHAMPUS benefits may be extended, claims for medical services and supplies will be subject to utilization review and quality assurance standards, norms, and criteria issued by the Director, OCHUMPUS, or a designee.

(h) *Benefit payments.* CHAMPUS benefit payments are made either directly to the beneficiary or sponsor or to the provider, depending on the manner in which the CHAMPUS claim is submitted.

(1) *Benefit payments made to beneficiary or sponsor.* When the CHAMPUS beneficiary or sponsor signs and submits a specific claim form directly to the appropriate CHAMPUS fiscal intermediary (or OCHAMPUS, including OCHAMPUSEUR), any CHAMPUS benefit payments due as a result of that specific claim submission will be made in the name of, and mailed to, the beneficiary or sponsor. In such circumstances, the beneficiary or sponsor is responsible to the provider for any amounts billed.

(2) *Benefit payments made to participating provider.* When the authorized provider elects to participate by signing a CHAMPUS claim form, indicating participation in the appropriate space on the claim form, and submitting a specific claim on behalf of the beneficiary to the appropriate CHAMPUS fiscal intermediary, any CHAMPUS benefit payments due as a result of that claim submission will be made in the name of and mailed to the participating provider. Thus, by signing the claim form, the authorized provider agrees to abide by the CHAMPUS-determined allowable charge or cost, whether or not lower than the amount billed. Therefore, the beneficiary or sponsor is responsible only for any required deductible amount and any cost-sharing portion of the CHAMPUS-determined allowable charge or cost as may be required under the terms and conditions set forth in §§ 199.4 and 199.5 of this part.

(3) *CEOB.* When a CHAMPUS claim is adjudicated, a CEOB is sent to the beneficiary or sponsor. A copy of the CEOB also is sent to the provider if the claim was submitted on a participating basis. The CEOB form provides, at a minimum, the following information:

(i) Name and address of beneficiary.

(ii) Name and address of provider.

(iii) Services or supplies covered by claim for which CEOB applies.

(iv) Dates services or supplies provided.

(v) Amount billed; CHAMPUS-determined allowable charge or cost; and amount of CHAMPUS payment.

(vi) To whom payment, if any, was made.

(vii) Reasons for any denial.

(viii) Recourse available to beneficiary for review of claim decision (refer to § 199.10 of this part).

NOTE: The Director, OCHAMPUS, or a designee, may authorize a CHAMPUS fiscal intermediary to waive a CEOB to protect the privacy of a CHAMPUS beneficiary.

(4) *Benefit under $1.* If the CHAMPUS benefit is determined to be under $1, payment is waived.

(i) *Fraud*—(1) *Federal laws.* 18 U.S.C. 287 and 1001 provide for criminal penalties for submitting knowingly or making any false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of any department or agency of the United States. Examples of fraud include situations in which ineligible persons knowingly use an unauthorized identification card in filing of a claim or provide erroneous information in order to obtain an identification card or eligibility through the DEERS (see § 199.3(g) of this part); or when providers submit claims for treatment, supplies, or equipment not rendered to or used for CHAMPUS beneficiaries; or when a participating provider bills the beneficiary for amounts over the CHAMPUS-determined allowable charge or cost.

(2) *Suspected fraud.* Any person, including CHAMPUS fiscal intermediaries, who becomes aware of a suspected fraud shall report the circumstances in writing, together with copies of any available documents pertaining thereto, to the Director, OCHAMPUS, or a designee, who shall initiate an official investigation of the case.

(j) *Erroneous payments and recoupment*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds that are not authorized by law or this part. Such payments are to be recouped under the provisions of § 199.11 of this part.

(2) *Claims denials resulting from clarification or change in law or Regulation.* In those instances where claims review results in a finding of denial of benefits previously allowed but currently denied due to a clarification or interpretation of law or this part, or due to a change in this part, no recoupment action need be taken to recover funds expended prior to the effective date of such clarification, interpretation, or change.

(k) *General assignment of benefits not recognized.* CHAMPUS does not recognize any general assignment of CHAMPUS benefits to another person. All CHAMPUS benefits are payable as described in this and other Sections of this part.

§ 199.8 Double coverage.

(a) *Introduction.* In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

> "A benefit may not be paid under a plan [CHAMPUS] covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under other plans, except in the case of a plan [Medicaid] administered under title 19 of the Social Security Act (42 U.S.C. 1306 *et seq.*)."

The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

(b) *Double coverage plan.* A double coverage plan is one of the following:

(1) *Insurance plan.* An insurance plan is any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(2) *Medical service or health plan.* A medical service or health plan is any plan or program of an organized health care group, corporation, or other entity for the provision of

BEST COPY AVAILABLE

health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(3) *Exceptions.* Double coverage plans do not include:

(i) Plans administered under title XIX of the Social Security Act (Medicaid);

(ii) Coverage specifically designed to supplement CHAMPUS benefits;

(iii) Entitlement to receive care from Uniformed Services medical care facilities; or

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service).

(c) *Application of double coverage provisions.* CHAMPUS claims submitted for otherwise covered services or supplies and which involve double coverage shall be adjudicated as follows:

(1) *CHAMPUS always last pay.* For any claim that involves a double coverage plan as defined above, CHAMPUS shall be last pay. That is, CHAMPUS benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) *Waiver of benefits.* A CHAMPUS beneficiary may not elect to waive benefits under a double coverage plan and use CHAMPUS. Whenever double coverage exists, the provisions of this Section shall be applied.

(3) *Last pay limitations.* CHAMPUS may not pay more as a secondary payer than it would have in the absence of other coverages. Application of double coverage provisions does not extend or add to the CHAMPUS benefits as otherwise set forth in this and other Sections of this part.

(d) *Special considerations*— (1) *CHAMPUS and Medicare.* In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be extended.

(2) *CHAMPUS and Medicaid.* Medicaid is not a double coverage plan. In any double coverage situation involving Medicaid, CHAMPUS is always the primary payer.

(3) *CHAMPUS and Worker's Compensation.* CHAMPUS benefits are not payable for a work-related illness or injury that is covered under a worker's compensation program.

(4) *PFTH.* All local resources must be considered and used before CHAMPUS benefits under the PFTH may be extended. If a handicapped CHAMPUS beneficiary who otherwise is eligible for benefits under the PFTH is eligible for other Federal, state, or local assistance to the same extent as any other resident or citizen, CHAMPUS benefits are not payable. The sponsor does not have the option of waiving available Federal, state, or local assistance in favor of using CHAMPUS benefits.

(e) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue such instructions, procedures, or guidelines, as necessary, to implement the intent of this section.

§ 199.9 [Reserved]

§ 199.10 Appeal and hearing procedures.

(a) *General* This section sets forth the policies and procedures for appealing decisions made by OCHAMPUS, OCHAMPUSEUR, and CHAMPUS fiscal intermediaries adversely affecting the rights and liabilities of beneficiaries, participating providers and providers denied the status of authorized provider under CHAMPUS. An appeal under CHAMPUS is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law or regulation.

(1) *Initial determination*—(i) *Notice of initial determination and right to appeal.* (A) OCHAMPUS, OCHAMPUSEUR, and CHAMPUS fiscal intermediaries shall mail notices of initial determinations to the CHAMPUS bene-

BEST COPY AVAILABLE

ficiary at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent or guardian, under established CHAMPUS procedures, constitutes notice to the beneficiary.

(B) CHAMPUS fiscal intermediaries and OCHAMPUSEUR shall notify providers of an initial determination on a claim only if the providers participated in the claim. (See § 199.7 of this part.)

(C) Notice of an initial determination on a claim processed by a CHAMPUS fiscal intermediary or OCHAMPUSEUR normally shall be made on a CEOB form

(D) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized CHAMPUS provider, or a decsion to disqualify or exclude a provider as an authorized provider under CHAMPUS shall state the reason for the determination and the underlying facts supporting the determination.

(E) In any case when the initial determination is adverse to the beneficiary or participating provider, or to the provider seeking approval as an authorized CHAMPUS provider, the notice shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing the appeal also shall be explained.

(ii) *Effect of initial determination.* The initial determination is final, unless appealed in accordance with this Section, or unless the initial determination is reopened by OCHAMPUS or the CHAMPUS fiscal intermediary.

(2) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination, including CHAMPUS, and authorized representatives of the parties. Any party to the initial determination, except CHAMPUS, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(i) *Parties to the initial determination.* For purposes of the CHAMPUS appeals and hearing procedures, the following are not parties to an initial determination and are not entitled to administrative review under this section.

(A) A provider disqualified or excluded as an authorized provider under CHAMPUS based on a determination of abuse or fraudulent practices or procedures under another Federal or federally funded program is not a party to the CHAMPUS action and may not appeal under this section.

(B) A sponsor or parent of a beneficiary under 18 years of age or guardian or an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party, although such persons may represent the appealing party in an appeal.

(C) A third party, such as an insurance company, is not a party to the initial determination and is not entitled to appeal even though it may have an indirect interest in the initial determination.

(D) A nonparticipating provider is not a party to the initial determination and may not appeal.

(ii) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary.

(A) The representative shall have the same authority as the party to the appeal and notice given to the representative shall constitute notice required to be given to the party under this part.

(B) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a CHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of a Uniformed Service who represents an immediate family member. In addition, the Director, OCHAMPUS, or designee, may appoint an officer or employee of the

United States as the CHAMPUS representative at a hearing.

(3) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of CHAMPUS benefits or approval as an authorized provider. Any cost or fee associated with the production or submission of information in support of an appeal may not be paid by CHAMPUS.

(4) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the CHAMPUS fiscal intermediary, OCHAMPUSEUR, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits.

(5) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this section. Examples of issues that are not appealable under this section include:

(i) A dispute regarding a requirement of the law or regulation.

(ii) The amount of the CHAMPUS-determined allowable cost or charge, since the methodology for determining allowable costs or charges is established by this part.

(iii) Certain other issues on the basis that the authority for the initial determination is not vested in CHAMPUS. Such issues include but are not limited to the following examples:

(A) Determination of a person's eligibility as a CHAMPUS beneficiary is the responsibility of the appropriate Uniformed Service. Although CHAMPUS, OCHAMPUS, and CHAMPUS fiscal intermediaries must make determinations concerning a beneficiary's eligibility in order to ensure proper disbursement of appropriated funds on each CHAMPUS claim processed, ultimate responsibility for resolving a beneficiary's eligibility rests with the Uniformed Services. Accordingly, disputed question of fact concerning a beneficiary's eligibility will not be considered an appealable issue under the provisions of this section, but shall be resolved in accordance with § 199.3 of this part.

(B) Similarly, decisions relating to the issuance of a Nonavailability Statement (DD Form 1251) in each case are made by the Uniformed Services. Disputes over the need for a Nonavailability Statement or a refusal to issue a Nonavailability Statement are not appealable under this section. The one exception is when a dispute arises over whether the facts of the case demonstrate a medical emergency for which a Nonavailability Statement is not required. Denial of payment in this one situation is an appealable issue.

(C) The decision to disqualify or exclude a provider because of a determination against that provider of abuse, or fraudulent practices or procedures under another Federal or federally funded program is not an initial determination that is appealable under this part. The provider is limited to exhausting administrative appeal rights offered under the Federal or federally funded program that made the initial determination of abuse or fraudulent practices or procedures. However, a determination to disqualify or exclude a provider because of abuse or fraudulent practices or procedures under CHAMPUS is an initial determination that is appealable under this part.

(6) *Amount in dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth below.

(i) The amount in dispute is calculated as the amount of money CHAMPUS would pay if the services and supplies involved in dispute were determined to be authorized CHAMPUS benefits. Examples of amounts of money that are excluded by the Regulation from CHAMPUS payments for authorized benefits include, but are not limited to:

(A) Amounts in excess of the CHAMPUS-determined allowable charge or cost.

BEST COPY AVAILABLE

(B) The beneficiary's CHAMPUS deductible and cost-share amounts.

(C) Amounts that the CHAMPUS beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(D) Amounts excluded under the provisions of § 199.8 of this part.

(ii) The amount of dispute for appeals involving a denial of a request for authorization in advance of obtaining care shall be the estimated allowable charge or cost for the services requested.

(iii) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized CHAMPUS provider or the determination to disqualify or exclude a provider as an authorized CHAMPUS provider.

(iv) Individual claims may be combined to meet the required amount in dispute if all of the following exist:

(A) The claims involve the same beneficiary.

(B) The claims involve the same issue.

(C) At least one of the claims so combined has had a reconsideration decision issued by OCHAMPUSEUR or a CHAMPUS fiscal intermediary.

NOTE: A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (a)(5)(i) of this section or does not involve a sufficient amount in dispute paragraph (a)(6) of this section may not be rejected at the reconsideration level of appeal. However, an appeal shall involve an appealable issue and sufficient amount in dispute under these paragraphs to be granted a formal review or hearing.

(7) *Levels of appeal.* The sequence and procedures of a CHAMPUS appeal vary, depending on whether the initial determination was made by the CHAMPUS fiscal intermediary, OCHAMPUSEUR, or OCHAMPUS.

(i) *Appeals levels for initial determination made by OCHAMPUSEUR or CHAMPUS fiscal intermediary.* (A) Reconsideration by OCHAMPUSEUR or CHAMPUS fiscal intermediary.

(B) Formal review by OCHAMPUS.

(C) Hearing.

(ii) *Appeal levels for initial determination made by OCHAMPUS.* (A) Formal review by OCHAMPUS.

(B) Hearing.

(b) *Reconsideration.* Any party to the initial determination made by OCHAMPUSEUR or the CHAMPUS fiscal intermediary may request a reconsideration.

(1) *Requesting a reconsideration.*—

(i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination made by OCHAMPUSEUR or the CHAMPUS fiscal intermediary such as the CEOB form.

(ii) *Where to file.* The request shall be submitted to the office that made the initial determination such as OCHAMPUSEUR, the CHAMPUS fiscal intermediary, or any other fiscal intermediary designated in the notice of initial determination.

(iii) *Allowed time to file.* The request must be mailed within 90 days after the date of the notice of initial determination.

(iv) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUSEUR or the CHAMPUS fiscal intermediary.

(2) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time the provider requested approval under CHAMPUS as an authorized provider. The reconsideration is performed by a member of the OCHAMPUSEUR or fiscal intermediary's staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or OCHAMPUSEUR or the fiscal intermediary may obtain.

(3) *Timeliness of reconsideration determination.* OCHAMPUSEUR or the fiscal intermediary normally shall issue its reconsideration determination no later than 60 days from the date of

receipt of the request for reconsideration by OCHAMPUSEUR or the fiscal intermediary.

(4) *Notice of reconsideration determination.* OCHAMPUS or the CHAMPUS fiscal intermediary shall issue a written notice of the reconsideration determination to the appealing part at his or her last known address. The notice of the reconsideration determinations must contain the following elements:

(i) A statement of the issues or issue under appeal.

(ii) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Whether the reconsideration upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(v) A statement of the right to appeal further in any case when the reconsideration determination is less than fully favorable to the appealing party and the amount in dispute is $50 or more.

(5) *Effect of reconsideration determination.* The reconsideration determination is final if either of the following exist:

(i) The amount in dispute is less than $50.

(ii) Appeal rights have been offered, but a request for formal review is not received by OCHAMPUS within 60 days of the date of the notice of the reconsideration determination.

(c) *Formal review.* Any party to the initial determination may request a formal review by OCHAMPUS if the party is dissatisfied with the reconsideration determination and the reconsideration determination is not final under the provisions of paragraph (b)(5) of this section. Any party to the initial determination made by OCHAMPUS may request a formal review by OCHAMPUS if the party is dissatisfied with the initial determination.

(1) *Requesting a formal review*—(i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination or OCHAMPUS initial determination) being appealed, and shall include any additional information or documents not submitted previously.

(ii) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045-6900.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination or OCHAMPUS initial determination being appealed.

(iv) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(2) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, at the time the provider requested approval by CHAMPUS as an authorized provider, or at the time of the action by OCHAMPUS to disqualify or exclude a provider under CHAMPUS. The formal review is performed by the Chief, Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination or reconsideration determination was based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

(3) *Timeliness of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, normally shall issue the formal review determination no later than 90 days from the date of receipt of the request for formal review by the OCHAMPUS.

(4) *Notice of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(i) A statement of the issue or issues under appeal.

(ii) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(v) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is $300 or more.

(5) *Effect of formal review determination.* The formal review determination is final if one or more of the following exist:

(i) The issue is not appealable. (See paragraph (a)(5) of this section).

(ii) The amount in dispute is less than $300. (See paragraph (a)(6) of this section).

(iii) Appeal rights have been offered but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

(d) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(5) of this section.

(1) *Requesting a hearing*—(i) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the formal review determination, and include any additional information or documents not submitted previously.

(ii) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045 6900.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the formal review determination being appealed.

(iv) *Official filing date.* A request for hearing shall be deemed filed on the date it is mailed and postmarked. If a request for hearing does not have a postmark, it shall be deemed filed on the day received by OCHAMPUS.

(2) *The hearing process.* The hearing shall be conducted as a nonadversary, administrative proceeding to determine the facts of the case and to allow the appealing party the opportunity personally to present the case before an impartial hearing officer. The hearing is a forum in which facts relevant to the case are presented and evaluated in relation to applicable laws regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time the provider requested approval under CHAMPUS as an authorized provider.

(3) *Timeliness of hearing.* (i) Except as otherwise provided in this section, within 60 days following receipt of a request for hearing, the Director, OCHAMPUS, or a designee, normally will appoint a hearing officer to hear the appeal. Copies of all records in the possession of OCHAMPUS that are pertinent to the matter to be heard or that formed the basis of the formal review determination shall be provided to the hearing officer and, upon request, to the appealing party.

(ii) The hearing officer, except as otherwise provided in this Section, normally shall have 60 days from the date of written notice of assignment to review the file, schedule and hold the hearing, and issue a recommended decision to the Director, OCHAMPUS, or designee.

(iii) The Director, OCHAMPUS, or designee, may delay the case assignment to the hearing officer if additional information is needed that cannot be obtained and included in the record within the time period specified above. The appealing party will be notified in writing of the delay resulting from the request for additional information. The Director, OCHAMPUS, or a designee, in such circumstances, will assign the case to a hearing officer within 30 days of receipt of all such additional information, or within 60 days of receipt of the request for hearing, whichever shall occur last.

(iv) The hearing officer may delay submitting the recommended decision if, at the close of the hearing, any party to the hearing requests that the record remain open for submission of additional information. In such circumstances, the hearing officer will have 30 days following receipt of all such additional information including comments from the other parties to the hearing concerning the additional information to submit the recommended decision to the Director, OCHAMPUS, or a designee.

(4) *Representation at a hearing.* Any party to the hearing may appoint a representative to act on behalf of the party at the hearing, unless such person currently is disqualified or suspended from acting in another Federal administrative proceeding, or unless otherwise prohibited by law, this part, or any other DoD regulation (see paragraph (a)(2)(ii) of this section). A hearing officer may refuse to allow any person to represent a party at the hearing when such person engages in unethical, disruptive, or contemptuous conduct, or intentionally fails to comply with proper instructions or requests of the hearing officer, or the provisions of this part. The representative shall have the same authority as the appealing party and notice given to the representative shall constitute notice required to be given to the appealing party.

(5) *Consolidation of proceedings.* The Director, OCHAMPUS, or a designee, may consolidate any number of proceedings for hearing when the facts and circumstances are similar and no substantial right of an appealing party will be prejudiced.

(6) *Authority of the hearing officer.* The hearing officer in exercising the authority to conduct a hearing under this part will be bound by 10 U.S.C. Chapter 55 and this part. The hearing officer in addressing substantive, appealable issues shall be bound by policy manuals, instructions, procedures, and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(7) *Disqualification of hearing officer.* A hearing officer voluntarily shall disqualify himself or herself and withdraw from any proceeding in which the hearing officer cannot give fair or impartial hearing, or in which there is a conflict of interest. A party to the hearing may request the disqualification of a hearing officer by filing a statement detailing the reasons the party believes that a fair and impartial hearing cannot be given or that a conflict of interest exists. Such request immediately shall be sent by the appealing party or the hearing officer to the Director, OCHAMPUS, or a designee, who shall investigate the allegations and advise the complaining party of the decision in writing. A copy of such decision also shall be mailed to all other parties to the hearing. If the Director, OCHAMPUS, or a designee, reassigns the case to another hearing officer, no investigation shall be required.

(8) *Notice and scheduling of hearing.* The hearing officer shall issue by certified mail, when practicable, a written notice to the parties to the hearing of the time and place for the hearing. Such notice shall be mailed at least 15 days before the scheduled date of the hearing. The notice shall contain sufficient information about the hearing procedure, including the party's right to representation, to allow for effective preparation. The notice also shall advise the appealing party of the right to request a copy of the record before the hearing. Additionally, the notice shall advise the appealing party of his or her responsibility to furnish the hearing officer, no later than 7 days before the scheduled date of the hearing, a list of all witnesses who will testify and a copy of all additional information to be presented at the hearing. The time and place of the hearing shall be determined by the hearing officer, who shall select a reasonable time and location mutually convenient to the appealing party and OCHAMPUS.

(9) *Dismissal of request for hearing*—(i) *By application of appealing party.* A request for hearing may be dismissed by the Director, OCHAMPUS,

BEST COPY AVAILABLE

or a designee, at any time before the mailing of the final decision, upon the application of the appealing party. A request for dismissal must be in writing and filed with the Chief, Appeals and Hearings, OCHAMPUS, or the hearing officer. When dismissal is requested, the formal review determination in the case shall be deemed final, unless the dismissal is vacated in accordance with paragraph (d)(9)(v) of this section.

(ii) *By stipulation of the parties to the hearing.* A request for a hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before to the mailing of notice of the final decision under a stipulation agreement between the appealing party and OCHAMPUS. When dismissal is entered under a stipulation, the formal review decision shall be deemed final, unless the dismissal is vacated in accordance with paragraph (d)(9)(v) of this section.

(iii) *By abandonment.* The Director, OCHAMPUS, or a designee, may dismiss a request for hearing upon abandonment by the appealing party.

(A) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with paragraph (d)(11)(xiii) of this section, if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for hearing that an appearance could not be made.

(B) An appealing party shall be deemed to have abandoned a request for hearing if, before assignment of the case to the hearing officer, OCHAMPUS is unable to locate either the appealing party or an appointed representative.

(C) An appealing party shall be deemed to have abandoned a request for hearing if the appealing party fails to prosecute the appeal. Failure to prosecute the appeal includes, but is not limited to, an appealing party's failure to provide information reasonably requested by OCHAMPUS or the hearing officer for consideration in the appeal.

(D) If the Director, OCHAMPUS, or a designee, dismisses the request for hearing because of abandonment, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (d)(9)(v) of this section.

(iv) *For cause.* The Director, OCHAMPUS, or a designee, may dismiss for cause a request for hearing either entirely or as to any stated issue. If the Director, OCHAMPUS, or a designee, dismisses a hearing request for cause, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (d)(9)(v) of this section. A dismissal for cause may be issued under any of the following circumstances:

(A) When the appealing party requesting the hearing is not a proper party under paragraph (a)(2)(i) of this section, or does not otherwise have a right to participate in a hearing.

(B) When the appealing party who filed the hearing request dies, and there is no information before the Director, OCHAMPUS, or a designee, showing that a party to the initial determination who is not an appealing party may be prejudiced by the formal review determination.

(C) When the issue is not appealable (see paragraph (a)(5) of this section).

(D) When the amount in dispute is less than $300 (see paragraph (a)(6) of this section).

(E) When all appealable issues have been resolved in favor of the appealing party.

(v) *Vacation of dismissal.* Dismissal of a request for hearing may be vacated by the Director, OCHAMPUS, or a designee, upon written request of the appealing party, if the request is received within 6 months of the date of the notice of dismissal mailed to the last known address of the party requesting the hearing.

(10) *Preparation for hearing*—(i) *Prehearing statement of contentions.* The hearing officer may on reasonable notice require a party to the hearing

to submit a written statement of contentions and reasons. The written statement shall be provided to all parties to the hearing before the hearing takes place.

(ii) *Agency records*—(A) *Hearing officer.* A hearing officer may ask CHAMPUS to produce for inspection, any records or relevant portions of records when they are needed to decide the issues in any proceeding before the hearing officer or to assist an appealing party in preparing for the proceeding.

(B) *Appealing party.* A request to a hearing officer by an appealing party for disclosure or inspection of CHAMPUS records shall be in writing and shall state clearly what information and records are required.

(iii) *Witnesses and evidence.* All parties to a hearing are responsible for producing, at each party's expense, meaning without reimbursement of payment by CHAMPUS, witnesses and other evidence in their own behalf, and for furnishing copies of any such documentary evidence to the hearing officer and other party or parties to the hearing. The Department of Defense is not authorized to subpoena witnesses or records. The hearing officer may issue invitations and requests to individuals to appear and testify without cost to the Government, so that the full facts in the case may be presented.

(iv) *Interrogatories and depositions.* A hearing officer may arrange to take interrogatories and depositions, recognizing that the Department of Defense does not have subpoena authority. The expense shall be assessed to the requesting party, with copies furnished to the hearing officer and other party or parties to the hearing.

(11) *Conduct of hearing*—(i) *Right to open hearing.* Because of the personal nature of the matters to be considered, hearings normally shall be closed to the public. However, the appealing party may request an open hearing. If this occurs, the hearing shall be open except when protection of other legitimate Government purposes dictates closing certain portions of the hearing.

(ii) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to produce and examine witnesses, to introduce exhibits, to question opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party to the hearing first called the witness to testify, and to rebut any evidence presented. Except for those witnesses employed by OCHAMPUS at the time of the hearing, or records in the possession of OCHAMPUS, a party to a hearing shall be responsible, that is to say no payment or reimbursement shall be made by CHAMPUS for the cost or fee associated with producing witnesses or other evidence in the party's own behalf, or for furnishing copies of documentary evidence to the hearing officer and other party or parties to the hearing.

(iii) *Burden of proof.* The burden of proof is on the appealing party affirmatively to establish by substantial evidence the appealing party's entitlement under law and this part to the authorization of CHAMPUS benefits or approval as an authorized provider. Any part of the cost or fee associated with producing or submitting in support of an appeal may not be paid by CHAMPUS.

(iv) *Taking of evidence.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Before taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(v) *Questioning and admission of evidence.* A hearing officer may question any witness and shall admit any relevant evidence. Evidence that is irrelevant or unduly repetitious shall be excluded.

(vi) *Relevant evidence.* Any relevant evidence shall be admitted, unless unduly repetitious, if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.

(vii) *CHAMPUS determination first.* The basis of the CHAMPUS determinations shall be presented to the hearing officer first. The appealing party shall then be given the opportunity to establish affirmatively why this determination is held to be in error.

(viii) *Testimony.* Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(ix) *Oral argument and briefs.* At the request of any party to the hearing made before the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted, and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(x) *Continuance of hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as otherwise provided here, shall be in accordance with this part. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to the hearing who is present at the hearing.

(xi) *Continuance for additional evidence.* If the hearing officer determines, after a hearing has begun, that additional evidence is necessary for the proper determination of the case, the following procedures may be invoked:

(A) *Continue hearing.* The hearing may be continued to a later date in accordance with paragraph (d)(11)(x) of this section.

(B) *Closed hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional evidence. Any evidence submitted after the close of the hearing shall be made available to all parties to the hearing, and all parties to the hearing shall have the opportunity for comment. The hearing officer may reopen the hearing if any portion of the additional evidence makes further hearing desirable. Notice thereof shall be given in accordance with paragraph (d)(8) of this section.

(xii) *Transcript of hearing.* A verbatim taped record of the hearing shall be made and shall become a permanent part of the record. Upon request, the appealing party shall be furnished a duplicate copy of the tape. A typed transcript of the testimony will be made only when determined to be necessary by OCHAMPUS. If a typed transcript is made, the appealing party shall be furnished a copy without charge. Corrections shall be allowed in the typed transcript by the hearing officer solely for the purpose of conforming the transcript to the actual testimony.

(xiii) *Waiver of right to appear and present evidence.* If all parties waive their right to appear before the hearing officer for presenting evidence and contentions personally or by representation, it will not be necessary for the hearing officer to give notice of, or to conduct a formal hearing. A waiver of the right to appear must be in writing and filed with the hearing officer or the Chief, Appeals and Hearings, OCHAMPUS. Such waiver may be withdrawn by the party by written notice received by the hearing officer or Chief, Appeals and Hearings, no later than 7 days before the scheduled hearing or the mailing of notice of the final decision, whichever occurs first. For purposes of this Section, failure of a party to appear personally or by representation after filing written notice of waiver, will not be cause for finding of abandonment and the hearing officer shall make the recommended decision on the basis of all evidence of record.

(12) *Recommended decision.* At the conclusion of the hearing and after the record has been closed, the matter shall be taken under consideration by the hearing officer. Within the time frames previously set forth in this Section, the hearing officer shall submit to the Director, OCHAMPUS, or a designee, a written recommended decision containing a statement of findings and a statement of reasons based on the evidence adduced at the hearing and otherwise included in the hearing record.

(i) *Statement of findings.* A statement of findings is a clear and concise statement of fact evidenced in the record or conclusions that readily can be deduced from the evidence of record. Each finding must be supported by substantial evidence that is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

(ii) *Statement of reasons.* A reason is a clear and concise statement of law, regulation, policies, or guidelines relating to the statement of findings that provides the basis for the recommended decision.

(e) *Final decision*—(1) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(i) *Final action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no further agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under paragraph (e)(1) of this section will not be relied on, used, or cited as precedent by the Department of Defense in the administration of CHAMPUS.

(ii) *Referral for review by ASD(HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of CHAMPUS policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of CHAMPUS. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(2) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (e)(2) may be relied on, used, or cited as precedent in the administration of CHAMPUS.

§ 199.11 Overpayments recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States because of an erroneous payment of benefits under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). A claim against several joint debtors arising from a single incident or transaction is considered to be one claim. It is the purpose of this Section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefits payments arising out of administration of CHAMPUS.

(b) *Authority*—(1) *Federal statutory authority.* The Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*) provides the basic authority under which claims may be asserted pursuant to this section. The Federal Claims Collection Act is a statute enacted to avoid unnecessary litigation. The Federal Claims Collection Act was substantially amended by the Debt Collection Act of 1982, Pub. L. 97-365, enacted on October 25, 1982. The Federal Claims Collection Act is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR Parts 101-105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims.

(2) *Other authority.* Occasionally, federal claims may arise which are grounded, at least in part, in authority other than the federal statute referenced above. These include, but are not limited to, claims arising under:

(i) State worker's compensation laws.

(ii) State hospital lien laws.

(iii) State no-fault automobile statutes.

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* The governmental policy of avoiding unnecessary litigation in the collection of claims by the United States for money or property necessitates aggressive agency collection action. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS claims asserting personnel are adequately supported to take timely and effective action. Claims arising out of any incident which has or probably will generate a claim in favor of the government will not be compromised nor will collection action be terminated by any person not authorized to take final action on the government's claim. By the Act of July 18, 1966 (28 U.S.C. 2415-2418), Congress established a statute of limitation applicable to the government in areas where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be processed expeditiously to the Department of Justice or the General Accounting Office, as appropriate, without attempting administrative collection action if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of the CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may erroneously make payment for services which are excluded as CHAMPUS benefits because they are determined to be not medically necessary. In that event recoupment action will be initiated by the fiscal intermediary at the same time the fiscal intermediary will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment. Obviously, if the appeal is resolved entirely in favor of the appealing party, that would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, compromise or to suspend or terminate collection action on claims arising under the Federal Claims Collection Act has been delegated to the Director, OCHAMPUS, or a designee.

(f) *Recoupment of erroneous payments*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or this part. Examples which are sometimes encountered in the administration of the CHAMPUS include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, or payment for services which were not medically necessary. Claims in favor of the government arising as the result of the filing of false CHAMPUS claims or other fraud fall under the direct cognizance of the Department of Justice. Consequently, the procedures in this section apply to such claims only when specifically authorized or directed by the Department of Justice. (See 32 CFR 101.3.)

(2) *Scope*—(i) *General.* Paragraph (f) of this section and the paragraphs following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, beneficiary, provider, physician or other supplier of services under the CHAMPUS. These provisions are adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Act of 1982, Pub. L. 97-365), which requires each agency of the U.S. Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General) to attempt collection of federal claims in favor of the United States arising out of the activities of the agency, and 5 U.S.C. 5514, which provides for installment deduction for indebtedness to the United States, implemented by regulations issued by the Office of Personnel Management, 5 CFR Part 550, and the Department of Defense, 32 CFR Part 90. Paragraph (f) of this section also includes government-wide collections by salary offset under 5 U.S.C. 5514.

(ii) *Debtor defined.* As used herein, "debtor" means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who has for any reason been erroneously paid under the CHAMPUS. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) *Delinquency defined.* As used herein, a debt is considered "delinquent" if it has not been paid by the date specified in the initial demand for payment (that is, the initial written notification) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is also considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims.* Claims arising from erroneous CHAMPUS payments in situations where the beneficiary has entitlement to insurance, medical service, health and medical plan, or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped under one of the following procedures:

(i) Where the other health insurance plan has not already made benefit payments to the beneficiary or provider, a claim for direct reimbursement will be asserted against the plan, pursuant to the fiscal intermediary's coordination of benefit procedures.

(ii) If the other health insurance plan has made its benefit payment prior to receiving the CHAMPUS request for reimbursement, the recoupment procedures set forth in paragraph (f) of this section will be followed.

(4) *Claims denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided but now denied due to a change, clarification or interpretation of the public law or this part, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification, or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing persons eligible to receive benefits under CHAMPUS. However, it is the responsibility of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director, OCHAMPUS, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

(ii) When it is determined that a person was not a CHAMPUS beneficiary, the CHAMPUS fiscal intermediary and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Recoupments of good faith payments initiated by the CHAMPUS fiscal intermediary will be processed pursuant to the provisions of paragraph (f) of this section.

(6) *Recoupment procedures*—(i) *Initial action.* When an erroneous payment is discovered, the CHAMPUS fiscal intermediary normally will be required to take the initial action to effect recoupment. Such action will be in accordance with the provisions of this part and the fiscal intermediary's CHAMPUS contract and will include demands for refund or an offset against any other CHAMPUS payment becoming due the debtor. When the efforts of the CHAMPUS fiscal intermediary to effect recoupment are not successful within a reasonable time, recoupment cases will be referred to the General Counsel, OCHAMPUS, for further action in accordance with the provisions of paragraph (f) of this section. All requests to debtors for refund or notices of intent to offset shall be in writing.

(ii) *Demand for payment.* The CHAMPUS fiscal intermediary and OCHAMPUS normally shall make a total of at least three progressively stronger written demands upon the debtor in terms which inform the debtor of the consequences of his or her failure to cooperate. The initial written demand shall inform the debtor of the basis for and the amount of the indebtedness. The initial written demand shall also inform the debtor of the following: The debtor's right to inspect and copy all records pertaining to the debt; his or her right to request an administrative review by the fiscal intermediary; that interest on the debt at the current rate as determined by the Director, OCHAMPUS, or a designee, will begin to accrue on the date of the initial demand notification; that such interest shall be waived on the debt, or any portion thereof, which is paid within 30 days of the date of the initial demand notification; that payment of the indebtedness is due within 30 days of the date of the initial demand notification; and that administrative costs and penalties will be charged pursuant to 4 CFR 102.13. The debtor also shall be informed that collection by offset against current or subsequent claims may be taken. All debtors will be offered an opportunity to enter into a written agreement to repay the indebtedness. The fiscal intermediary demand letters must be dated the same day as they are mailed. Two written demands, at 30-day intervals, normally will be made by the CHAMPUS fiscal intermediary unless a response to the first demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor, of his removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor. Responses should be made within 30 days whenever feasible. If these initial efforts at collection are not productive or if immediate legal action on the claim appears necessary, the claim either will be referred promptly by the CHAMPUS fiscal intermediary to the General Counsel, OCHAMPUS, or the CHAMPUS fiscal intermediary will prepare a final notice informing the debtor that the debt is to be offset in whole or in part. When a case is referred to OCHAMPUS, the Office of General Counsel will normally prepare a third written demand unless from the record such demand appears futile or otherwise inappropriate.

(iii) *Collection by administrative offset.* Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. No collection by offset may be undertaken unless a demand for payment containing all of the procedural safeguards described in paragraph (f)(6)(ii) of this section, has been sent to the debtor. The determinations of indebtedness made for recoupment of erroneous CHAMPUS payments rarely involve issues of credibility of veracity. Erroneous CHAMPUS payments most frequently arise from claims submitted by individuals ineligible for CHAMPUS benefits; from claims submitted for services or supplies not covered by CHAMPUS; from claims in which there have been other insurance payments which reduce the CHAMPUS liability and from claims from participating providers in which payment is initially erroneously made to the beneficiary. While these recoupment claims normally involve the resolution of factual questions, these resolution nearly always require only reference to the documentary evidence compiled in the investigation and processing of the claim. The appeals system described in § 199.10 of this part affords a CHAMPUS beneficiary or participating provider an opportunity for an administrative appellate review, including, under certain circumstances, the right to oral hearing before a hearing officer. Further, there is no statutory provision for the waiver of indebtedness arising from erroneous CHAMPUS payments, other than the provisions of the Federal Claims Collection Act which allow for the compromise of claims or the termination of collection action under certain circumstances specified in paragraph (g) of this section. Consequently, the pre-offset oral hearing requirements of the Federal Claims Collection Standards (4 CFR 102.3) do not apply to the recoupment of erroneous CHAMPUS payments. CHAMPUS fiscal intermediaries may take administrative action to offset erroneous payments against other current CHAMPUS payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or any part of a debt may be offset depending upon the amount available for offset. Only the case in which no possibility of offset arises within 60 days of the initiation of collection action and on which other collection efforts have been unsuccessful or in which the debtor seeks relief from the indebtedness will be referred to the General Counsel, OCHAMPUS, by the CHAMPUS fiscal intermediary. Offset, under the provisions of 31 U.S.C. 3716, is not to be used with respect to debts owed by any state or local government. Any requests for offset that are received from other agencies shall be forwarded to the General Counsel, OCHAMPUS, for processing, as will orders for garnishment issued by courts of competent jurisdiction.

(iv) *Collection of installments.* CHAMPUS recoupment claims should be collected in one lump sum whenever possible. However, if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments by the CHAMPUS fiscal intermediary or the General Counsel, OCHAMPUS. Installment payments normally will be required on at least a monthly basis and their size will bear a reasonable relation to the size of the debt and the debtor's ability to pay. A CHAMPUS fiscal intermediary should not enter into installment agreements which extend beyond 24 months. OCHAMPUS installment agreements normally should liquidate the government's claim within 3 years. Installment payments of less than $50 per month normally will be accepted only if justifiable on grounds of financial hardship or some other reasonable cause. Any installment agreement with a debtor in which the total amount of the deferred installments will exceed $750 should normally include an executed promissory note.

(v) *Interest, penalties, and administrative costs.* Interest shall be charged on CHAMPUS recoupment debts and debts collected in installments in accordance with 4 CFR 102.13 and instructions issued by the Director, OCHAMPUS, or a designee. Interest shall accrue from the date on which the initial demand is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (that is, the Treasury tax and loan account rate). The rate of interest, as initially assessed shall remain fixed for the duration of the indebtedness, except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed. The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest began to accrue, shall be waived. The agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the collection of interest, penalties, and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, OCHAMPUS, or a designee, may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Some situations in which such a waiver may be appropriate include:

(A) Waiver of interest consistent with 4 CFR 104.2(c)(2) in connection with a suspension of collection action pending a CHAMPUS appeal under § 199.10 of this part where there is a substantial issue of fact in dispute.

(B) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver may be appropriate include: a debt arising when a CHAMPUS beneficiary, who is unaware of the loss of eligibility for CHAMPUS because he or she has become eligible for Medicare, continues to file and be paid for CHAMPUS claims, resulting in erroneous CHAMPUS payments; a debt arising when a CHAMPUS beneficiary in good faith files and is paid a CHAMPUS claim for medical services or supplies which are later determined not to be benefits of CHAMPUS; and a debt arising when a CHAMPUS beneficiary is overpaid as the result of a calculation error on the part of a fiscal intermediary or OCHAMPUS.

(C) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full.

When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section) shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year shall be assessed on any portion of a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(vi) *Referral to other federal agencies for administrative offset.* As appropriate and in accordance with 4 CFR Part 1023, agencies will be requested to initiate administrative offset to collect CHAMPUS debts. When a debtor is employed by the U.S. Government, or is a member or retired member of the Uniformed Service, and collection by offset against other CHAMPUS payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment within 60 days, the Director, OCHAMPUS, or a designee, may contact the agency holding funds payable to the debtor for payment by allotment or otherwise by salary offset from current disposable pay in accordance with 37 U.S.C. 1007 or 5 U.S.C. 5514 as implemented by 32 CFR Part 90 and 5 CFR Part 550. Where applicable, the request for recovery of erroneous CHAMPUS payments shall be submitted to the debtor's paying agency in accordance with 5 CFR 550.1106. Before contacting the paying agency, the Director, OCHAMPUS, or a designee, will provide the debtor written notification of the agency's intent to collect the debt by means of salary offset, authorized by 5 U.S.C. 5514. The notification will include, as a minimum:

(A) The agency's determination that a debt is owed, including the origin, nature, and the amount of the debt;

(B) The date by which payment is to be made, which will normally be 30 days from the date the demand letter is mailed;

(C) The amount, frequency, proposed beginning date and duration of the intended deductions, which will be determined in accordance with the provisions of 5 CFR 550.1104 or 32 CFR Part 90, as appropriate. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (4 CFR 102.11). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. Debts must be collected in one lump-sum whenever possible. However, if the employee is financially unable to pay in one lump-sum, or the amount of the debt exceeds 15 percent of current disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made to effect collection within the period of anticipated active duty or employment. If the debtor retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any kind due the employee from the paying agency as of the date of separation shall be made to the extent necessary to liquidate the debt pursuant to 31 U.S.C. 3716 as implemented by 5 CFR Part 550 and 32 CFR Part 90. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only with reasonable justification. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights the debtor may have under that statute or any other provisions of contract or law, unless there are statutory or contractual provisions to the contrary.

(D) An explanation of interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(E) Advice that the debtor may inspect and copy government records relating to the debt or, if debtor or his or her representative cannot personally inspect the records, to request and receive a copy of such records. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

(F) An opportunity for a review by the agency of its determination regarding the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of the receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor. A request for waiver or reconsideration should be accompanied by supporting documents indicating why the debtor believes he is not so indebted, or by a financial affidavit supporting his request for an alternative repayment schedule;

(G) Notice that the timely filing of a petition for review will stay the commencement of collection proceedings;

(H) Notice that a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the review unless the employee requests, and the agency grants, a delay in the proceedings;

(I) The opportunity, if it has not been previously provided, to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement will be signed by both the debtor and the agency's representative and will be kept in the agency's files;

(J) Notice that any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(*1*) Disciplinary procedures appropriate under Chapter 75 of Title 5 U.S. Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(*2*) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable authority, or

(*3*) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002, or any other applicable authority;

(K) Where applicable, notice of the debtor's right to appeal, under § 199.10 of this part;

(L) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will promptly be refunded to the debtor. Refunds do not bear interest unless required or permitted by law or contract;

(M) The specific address to which all correspondence regarding the debt shall be directed. Unless otherwise prohibited by law, moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund may be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. The General Counsel, OCHAMPUS, may forward requests for offset of debts arising from the operation of CHAMPUS to the appropriate officials of the Office of Personnel Management. These requests shall comply with the provisions of 4 CFR 102.4 and 5 CFR Part 550.

(vii) *Referral to debt collection agencies.* Pursuant to the provisions of the Federal Claims Collection Standards (4 CFR 102.6), the Director, OCHAMPUS, or a designee, is authorized to enter into contracts for collection services, including contracts with private collection agencies for the purpose of supplementing and strengthening the collection efforts of the Department of Defense in recouping erroneous CHAMPUS payments. Such contracts will supplement but not replace the basic collection program described herein. The authority to resolve disputes, compromise claims, terminate collection action and initiate legal action may not be delegated in such contracts but will be retained by the Director, OCHAMPUS, or a designee. Individuals or firms that enter into contracts for collection services pursuant to this paragraph are subject to the Privacy Act of 1974, as amended, 5

U.S.C. 552a, federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. Debt collection contractors shall be required to account strictly for all amounts collected and must agree to provide any data contained in their files relating to 4 CFR 105.2(a) (1), (2) and (3). Contracts for commercial collection services must comply with 32 CFR Part 90.

(viii) *Referrals to consumer reporting agencies.* The Director, OCHAMPUS, or a designee, is authorized to provide for the reporting of delinquent debts to consumer reporting agencies. Delinquent debts are those which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial notification of indebtedness, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. These referrals may be made only after publication of a "routine use" for the disclosures involved as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Procedures developed for such referrals must also insure that an accounting of the disclosures is kept which is available to the debtor; that the consumer reporting agencies are provided with corrections and annotations of disagreements by the debtor; and that reasonable efforts are made to assure that the information to be reported is accurate, complete, timely and relevant. When requested by a consumer reporting agency, verification of information disclosed will promptly be provided. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the consumer reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reasonable action will be taken to locate an individual for whom a current address is not available.

(ix) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in the collection of a debt under this section, the Director, OCHAMPUS, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. These requests will comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service. Disclosure of a mailing address so obtained may be made pursuant to 4 CFR 102.18(b) and 31 U.S.C. 3711.

(g) *Compromise, suspension or termination of collection actions arising under the Federal Claims Collection Act*—(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action thereon may be suspended or terminated if:

(i) The claim exclusive of interest, penalties and administrative costs, does not exceed $20,000, and

(ii) There is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(iii) After deducting the amount of partial payments or collections, if any, if a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to compromise, suspend, or terminate collection action rests solely with the Department of Justice.

(2) *Authority.* CHAMPUS fiscal intermediaries are not authorized to compromise or to suspend or terminate collection action on federal CHAMPUS claims. Only the Director,

OCHAMPUS, or a designee, and Uniformed Service claims officers acting under the provisions of their own regulations, are so authorized.

(3) *Basis for compromise.* A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The debtor refuses to pay the claim in full and the government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings;

(iii) There is real doubt concerning the government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a *bona fide* dispute as to the facts; or

(iv) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim giving consideration to its size and the amount which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and:

(A) The applicable statute of limitations has been tolled or started running anew; or

(B) Future collection action can be effected by offset, notwithstanding the statute of limitations with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(C) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(iii) Consideration may be given by the Director, OCHAMPUS, or a designee, to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative review under § 199.10 of this part of any CHAMPUS claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be based upon appropriate consideration, on a case-by-case basis as to whether:

(A) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor;

(B) The Government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and

(C) Collection of the debt will cause undue hardship.

(5) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

(i) The United States cannot collect or enforce collection of any significant sum from the debtor having due regard to the judicial remedies available to the government, the debtor's future financial prospects and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either:

(A) There is no security remaining to be liquidated, or

(B) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim;

(iii) The cost of further collection action is likely to exceed any recovery;

(iv) It is determined that the claim is legally without merit; or

(v) Evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(6) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, the responsible CHAMPUS collection authority will consider the following factors:

(i) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or improper transfer of assets and the availability of assets or income which may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at forced sale; or

(iv) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence and related pragmatic considerations.

(7) *Amount of compromise.* The amount acceptable in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings. Consideration shall be given to the following:

(i) The exemptions available to the debtor under state and federal law;

(ii) The time necessary to collect the debt;

(iii) The litigative probabilities involved; and

(iv) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(8) *Payment of compromised claims*—(i) *Time and manner.* Compromised claims are to be paid in one lump sum if possible. However, if payment of a compromise is necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that CHAMPUS has agreed to accept as a compromise in full settlement of a CHAMPUS claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised claim is not settled until the full payment of the compromised amount has been made within the time and the manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to the default.

(9) *Effect of compromise, or suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title 11 bankruptcy case and totaling $600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed by them for inclusion in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or suspension or termination of collection action on a federal claim is not an initial determination for purpose of the appeal procedures of § 199.10 of this part.

(h) *Referrals for collection*—(1) *Prompt referral.* Federal claims of $600 or more on which collection action has been taken in accordance with the provisions of this section and which cannot be collected or compromised or on which collection action cannot be suspended or terminated, as provided herein, will be promptly referred by the Director, OCHAMPUS, or a designee, to the Department of Justice for litigation in accordance with 4 CFR Part 105. Such referrals will be made as early as possible consistent with aggressive collection action by CHAMPUS fiscal intermediaries and OCHAMPUS and well within the period for bringing a timely suit against the debtor. Ordinarily referrals will be made within one year of the OCHAMPUS final determination of the fact and the amount of the debt.

(2) *Report of prior collection actions.* The Director, OCHAMPUS, or a designee, will prepare a Claims Collection Litigation Report (CCLR) for each case referred for collection under the provisions of this section. The CCLR shall also be used when a claim is referred to the Department of Justice in order to obtain approval of that Department with respect to compromise, suspension, or termination when such approval is required by 4 CFR 103.1(b) and 104.1(b). The CCLR will include, as a minimum, the following:

(i) A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the required administrative collection actions have been omitted, the reason for its omission must be provided.

(ii) The current address or the debtor, or the same and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(iii) Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under state and federal law and the judicial remedies available to the government. Such credit data may take the form of a commercial credit report; an agency investigative report showing the debtor's assets, liabilities, income, and expenses; the individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or an audited balance sheet of a corporate debtor. Such credit data may be omitted if a surety bond is available in an amount sufficient to satisfy the claim in full; the forced sale value of any security available for application to the government's claim is sufficient to satisfy the claim in full; the debtor is in bankruptcy or receivership; the debtor's liability to the government is fully covered by insurance, in which case such information as can be developed concerning the identity and address of the insurer and the type and amount of insurance coverage will be furnished; or the nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of state or local government.

(3) *Preservation of evidence.* The Director, OCHAMPUS, or a designee, will take such action as is necessary to ensure that all files, records and exhibits on claims referred hereunder are properly preserved.

(i) Claims Involving Indications of Fraud, Filing of False Claims or Misrepresentation.

Any case in which there is an indication of fraud, filing of false claims or misrepresentation will be promptly referred to the Director, OCHAMPUS, or a designee, for processing. The Director, OCHAMPUS, or a designee, will investigate and evaluate the case and either refer the case to the appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all CHAMPUS beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until payment or denial of the claim is authorized by the Director, OCHAMPUS, or a designee. Collection action on all federal claims in which a suspicion of fraud, misrepresentation or filing false claims arises will be suspended pending referral to the appropriate law enforcement agencies by the Director, OCHAMPUS, or a designee. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

§ 199.12 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover the costs of medical care furnished or paid for on behalf of CHAMPUS beneficiaries from third parties. These third parties may be individuals, or entities who are liable for tort damages to the injured CHAMPUS beneficiary or a liability insurance carrier covering the individual or entity. These third parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation law or other source of primary payment.

(b) *Authority*—(1) *Federal statutory authority.* The Federal Medical Care Recovery Act (42 U.S.C. 2651-2653) provides the basis under which claims may be asserted or other actions taken under this Section. The Federal Medical Care Recovery Act is a statute enacted to authorize the recovery of the reasonable value of medical care furnished or paid for by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third party. This Act is implemented by Executive Order 11060 and an Attorney General regulation, 28 CFR Part 43.

(2) *Other authority.* Third party recoveries may arise in whole or in part under authorities other than the Medical Care Recovery Act. These include, but are not limited to:

(i) State Workers' Compensation Laws

(ii) State hospital lien laws

(iii) State no-fault or uninsured motorist statutes

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* CHAMPUS third party recovery claims can be complex and difficult to administer because they often involve recovery potential from multiple sources. It is essential that all persons responsible for taking action under this section have adequate training and support in this area. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS personnel (including fiscal intermediary personnel) responsible for taking any action under this section are adequately trained and supported to take timely and effective action. Responsibility for taking third party recovery action at various times can rest with either fiscal intermediary personnel, OCHAMPUS employees, or uniformed service claims asserting authorities. For this reason close coordination between those responsible for any action under this section is essential. Care must also be taken to insure that appropriate action to assert any third party recovery right is taken in sufficient time to preclude the running of any applicable statute of limitations or other bar to the government's right to recover.

(d) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third party recovery claims in favor of the United States arising from the operation of CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may deny payment for services which are determined to be excluded as CHAMPUS benefits because they are found to be not medically necessary. In that event the fiscal intermediary will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.10 of this part.

(e) *Federal Medical Care Recovery Act Claims*—(1) *General.* The Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651-2653) provides that in any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

(2) *Obligations of persons receiving treatment.* To insure the expeditious and efficient processing of Federal Medical Care Recovery Act claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

BEST COPY AVAILABLE

(i) To provide complete information regarding the circumstances surrounding an injury as a condition precedent to the processing of a CHAMPUS claim involving possible third-party liability.

(ii) To assign in writing to the United States his or her claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished, or to be furnished, or any portion thereof;

(iii) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person;

(iv) To notify the responsible recovery judge advocate, the CHAMPUS fiscal intermediary or General Counsel, OCHAMPUS, or other officer who is representing the interests of the government at the time, of a settlement with, or an offer of settlement from a third person; and,

(v) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(3) *Responsibility for recovery.* The Director, OCHAMPUS, or a designee, is responsible for insuring that CHAMPUS claims arising under the Federal Medical Care Recovery Act are properly referred to and coordinated with the Uniformed Services. Generally, federal claims arising under this statute will be processed as follows:

(i) *Identification and referral of Federal Medical Care Recovery Act claims*—(A) *CHAMPUS fiscal intermediaries.* In most cases where medical care is provided by civilian providers and payment for such care has been made by a CHAMPUS fiscal intermediary, initial identification of potential third-party liability will be by the CHAMPUS fiscal intermediary. In such cases, the CHAMPUS fiscal intermediary is responsible for conducting a preliminary investigation and referring the case to designated appropriate legal officers of the Uniformed Services.

(B) *Initial identification by other agencies.* Occasionally, cases involving potential third-party liability may be initially identified by offices, agencies or individuals other than a CHAMPUS fiscal intermediary. When this occurs, these cases should be initially referred to the General Counsel, OCHAMPUS, Aurora, CO 80045-6900, for evaluation. If appropriate, the General Counsel, OCHAMPUS, may refer the case to the fiscal intermediary or the designated Uniformed Service legal office for action.

(ii) *Processing CHAMPUS claims.* When the CHAMPUS fiscal intermediary initially identifies a claim as involving potential third-party liability, it shall request additional information concerning circumstances of the injury or disease from the beneficiary or other responsible party unless adequate information is submitted with the claim. The information normally is obtained by requesting the beneficiary to complete a personal injury questionnaire. The CHAMPUS claim will be suspended and no payment issued pending receipt of the third-party liability information. If the requested third-party liability information is not received, the claim will be denied. A CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting a completed third-party liability questionnaire with the first claim for treatment of an accidential injury. Third-party liability information normally is required only once concerning any single accidental injury. Once the third-party liability information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party liability information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(iii) *Ascertaining total potential liability.* It is essential that the legal office responsible for asserting the claim against the third party receive from the CHAMPUS fiscal intermediary a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by CHAMPUS for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible legal office to secure from the CHAMPUS fiscal intermediary updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(4) *Representing the government's interest.* The government's right to recover the amounts expended for the patient's medical care is independent of the right the patient has to assert a claim against the third person for damages. The existence of the government's right, however, is dependent upon establishing the liability of the third person under ordinary principles of law.

(i) *Department of Justice.* Frequently, collection actions under the Federal Medical Care Recovery Act must be referred to the Department of Justice for litigation. This is usually necessary because either the administrative collection action has been unsuccessful or the injured party has initiated suit and the government must be joined to protect its interests. When such referrals involve significant cases in which the dollar amount of the potential recovery on CHAMPUS claims exceeds $40,000 or involve a unique or significant legal issue, notice of the referral will be provided to the General Counsel, OCHAMPUS. Upon request by the Uniformed Service involved, the General Counsel, OCHAMPUS, will assist in the coordination of any use with the Department of Justice.

(ii) *Private attorneys.* The attorney for the injured beneficiary may be requested to represent the interests of the government and join both claims in a single action against the third person. Such representation of the government's interest normally must be made at no expense to the government. However, when such representation of the government's interest is undertaken by the injured party's attorney for the government, offices and agencies involved will extend full cooperation to the injured party's attorney to insure that the government's interests are fully protected. The coordination of such cases is normally the responsibility of the designated Uniformed Service claims office. However, the General Counsel, OCHAMPUS, may be requested to provide assistance in coordinating CHAMPUS matters relating to these cases. If the attorney representing the injured beneficiary does not wish to join the government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit may be initiated by the United States for the reasonable value of the care or treatment provided.

(5) *Settlement and waiver of Federal Medical Care Recovery Act claims*—(i) *Authority of the Uniformed Services legal offices.* Uniformed Services legal offices may, under the authority and provisions of regulations prescribed by their respective departments, (A) accept the full amount of a claim and execute a release therefore, (B) compromise or settle and execute a release of any claim, not in excess of $40,000, which has been referred to it under the provisions of this section, or (C) waive, and in this connection, release any claim not in excess of $40,000 in whole or in part, either for the convenience of the government, or if it is determined that collection would result in undue hardship upon the person who suffered the disease or injury resulting in the care and treatment provided under the CHAMPUS.

(ii) *Department of Justice approval required.* A claim in excess of $40,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice. The Department of Justice is also to be consulted in all cases involving:

(A) Unusual circumstances,

(b) A new point of law which may serve as a precedent, or

(C) A policy question where there is or may be a difference of views between federal departments and agencies.

(iii) *Limitation on the authority of the Uniformed Services legal offices.* The authority of compromise, settlement, waiver and release described by § 199.12(e)(5) can not be exercised in any case in which (A) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (B) a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described herein and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(6) *Reporting requirements.* The Department of Defense is required to submit an annual report to the Attorney General stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons for third-party federal claims arising from the operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(i) *CHAMPUS fiscal intermediaries.* Each CHAMPUS fiscal intermediary shall submit on or before January 31 of each year an annual report to the Director, OCHAMPUS, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar amount of cases investigated for potential third-party liability and the number and dollar amount of cases referred to Uniformed Services claims offices for further investigation and collection. These latter figures are to be itemized by the states and Uniformed Services to which the cases are referred.

(ii) *Uniformed Services.* Each Uniformed Service will submit an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving CHAMPUS payments received from CHAMPUS fiscal intermediaries, the number and dollar amount of cases involving CHAMPUS payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third persons. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year, by each Uniformed Service to the Director, OCHAMPUS, or a designee.

(iii) *Implementation of the reporting requirements.* The reporting requirements prescribed by paragraph (e)(6)(i) of his section, are to be implemented by the Director, OCHAMPUS, or a designee, by an appropriate action. The reporting requirements prescribed by paragraph (e)(6)(ii), of this section are to be implemented as soon as practicable by agreement between the Director, OCHAMPUS, or a designee, and the affected reporting agency. In no event will the reporting requirements prescribed in paragraph (e)(6)(ii) of this section, be implemented later than December 23, 1988.

(f) Automobile or other medical payment insurance, no-fault insurance, or uninsured motorist insurance. Payment may not be made under CHAMPUS for any medical service or supply to the extent that payment has been made or can reasonably be expected to be made for the service or supply under medical insurance or other plan, automobile medical payment insurance policy or plan, uninsured motorist insurance, no-fault insurance or other forms of medical payments protection. Unless all or a portion of a payment under a no-fault or uninsured motorist insurance policy is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary. Where a CHAMPUS beneficiary is covered by no-fault or uninsured motorist insurance, CHAMPUS benefits will not become available until the CHAMPUS beneficiary furnishes written documentation that he or she has incurred medical expenses equal to the full amount of the payment received under the policy, or to that portion of the total payment received which was designated for medical expenses. Based upon the results of the investi-

BEST COPY AVAILABLE

gation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of personal injuries for which it is likely that such other insurance is available. These claims will be processed initially as double coverage claims under the provisions of § 199.8 of this part. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section.

(g) *Worker's Compensation Claims.* Based upon the results of the investigation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of work-related injuries. These claims will be processed initially as double coverage claims under § 199.8 of this part dealing with worker's compensation claims. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section. Unless all or a portion of a payment made pursuant to a worker's compensation claim is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary.

(h) *Mixed claims.* Occasionally, a claim arising under the Medical Care Recovery Act will be referred to a claims collection authority which also has some other potential for recovery. A typical example of such a claim is one arising as the result of an automobile accident in which there is a likely tortfeasor and the injured party is also covered by some combination of other health insurance which is primary to CHAMPUS, such as, worker's compensation, or a medical payments provision of an automobile policy. These claims will also initially be processed as double coverage claims. In addition, agency claims collection authorities should take full cognizance of all avenues of potential recovery as long as there is any potential for recovery from the tortfeasor. Once final action has been taken, any remaining possible recovery under the Federal Claims Collection Act may be referred to the General Counsel, OCHAMPUS, for further action in accordance with § 199.11 of this part. Such referrals should contain a complete report of all actions taken on the case and full and complete documentation of the claims involved.

APPENDIX A—ACRONYMS

AFR—Air Force Regulation
AR—Army Regulation
ASD (HA)—Assistant Secretary of Defense (Health Affairs)
CCLR—Claims Collection Litigation Report
CEOB—CHAMPUS Explanation of Benefits
CFR—Code of Federal Regulations
CHAMPUS—Civilian Health and Medical Program of the Uniformed Services
CRD—Chronic Renal Disease
CT—Computerized Tomography
DASD (A)—Deputy Assistant Secretary of Defense (Administration)
D.D.S.—Doctor of Dental Surgery
DEERS—Defense Enrollment Eligibility Reporting System
DHHS—Department of Health and Human Services
D.M.D.—Doctor of Dental Medicine
DME—Durable Medical Equipment
D.O.—Doctor of Osteopathy
DoD—Department of Defense
DSM-III—Diagnostic and Statistical Manual of Mental Disorders (Third Edition)
EEG—Electroencephalogram
EST—Electroshock Therapy
FAR—Federal Acquisition Regulation
FEHBP—Federal Employees Health Benefits Program
FMCRA—Federal Medical Care Recovery Act
FR—Federal Register
HBA—Health Benefits Advisor
HL—Hearing Threshold Level
Hz—Hertz
ICD-9-CM—International Classification of Diseases, 9th Revision, Clinical Modification
ICU—Intensive Care Unit
IQ—Intelligence Quotient
JCAH—Joint Commission on Accreditation of Hospitals
L.P.N.—Licensed Practical Nurse
L.V.N.—Licensed Vocational Nurse
MBD—Minimal Brain Dysfunction
MCO—Marine Corps Order
M.D.—Doctor of Medicine
MIA—Missing in Action
NATO—North Atlantic Treaty Organization
NAVMILPERSCOMINST—Navy Military Personnel Command Instruction

NAVPERS—Navy Personnel
NOAA—National Oceanic and Atmospheric Administration
OCHAMPUS—Office of Civilian Health and Medical Program of the Uniformed Services
OCHAMPUSEUR—Office of Civilian Health and Medical Program of the Uniformed Services for Europe
OCHAMPUSPAC—Office of Civilian Health and Medical Program of the Uniformed Services for the Pacific Area
OCHAMPUSSO—Office of Civilian Health and Medical Program of the Uniformed Services for the Southern Hemisphere
OMB—Office of Management and Budget
PFTH—Program for the Handicapped
PKU—Phenylketonuria
R.N.—Registered Nurse
RTC—Residential Treatment Center
SNF—Skilled Nursing Facility
STF—Specialized Treatment Facility
U.S.C.—United States Code
USPHS—U.S. Public Health Service

PART 200—INDUSTRIAL MOBILIZATION PRODUCTION PLANNING SYSTEMS AND PROCEDURES

Sec.
200.1 Purpose.
200.2 Applicability.
200.3 Responsibilities.

Authority: 5 U.S.C. 301.

Source: 34 FR 6375, Apr. 11, 1969, unless otherwise noted.

§ 200.1 Purpose.

This part authorizes the publication of a single Department of Defense Industrial Mobilization Production Planning Manual (DoD 4005.3-M)[1] containing supplemental guidance to the policies and principles established in DoD Directive 4005.1, "Department of Defense Industrial Mobilization Production Planning Program—Limited War," dated June 23, 1967,[2] governing:

(a) Development and maintenance of the industrial production base; and

(b) Planning necessary to insure that the base will be responsive to military procurement actions during a Limited War.

§ 200.2 Applicability.

The provisions of this part and the DoD Manual[1] apply to (a) the Military Departments and the Defense Supply Agency; (b) other participating Federal Agencies; and (c) that portion of the industrial community which is, or may become, engaged in planning for the fulfillment of DoD requirements under the provisions of the DoD Manual.[1]

§ 200.3 Responsibilities.

(a) The Deputy Assistant Secretary of Defense (Installations and Logistics) for Materiel will:

(1) Publish and maintain the DoD Industrial Mobilization Production Planning Manual (DoD 4005.3-M)[1] and will (i) assign functional responsibilities to participating organizational elements; (ii) establish principles and procedural systems governing the operational aspects of mobilization production planning; (iii) define terms; (iv) prescribe DD Forms and instructions for their use; (v) specify records to be maintained by users; (vi) establish security standards for the protection of planning in process and planning completed; and

(2) Maintain overall surveillance to insure continuous implementation of the provisions of this part and the DoD Manual[1] throughout the Department of Defense.

(b) The Military Departments and the Defense Supply Agency will (1) designate an individual and an alternate to act as the single point of contact with the DASD(I&L) Materiel and represent its interest on all industrial mobilization production planning program matters; and (2) assist the DASD(I&L) Materiel or his designee concerning program improvements and changes.

(c) Other participating Federal Agencies are invited to designate an individual and an alternate to represent their Agencies' interests in the program on a basis comparable to those who will represent the Military Departments and the Defense Supply Agency as provided in paragraph (b) of this section.

---

[1] Filed as part of the original document. Copies available at Government Printing Office (GPO), Mar. 27, 1969.

[2] Filed as part of the original document. Copies available at the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120.

PART 201—SALE OF SURPLUS MILITARY EQUIPMENT TO STATE AND LOCAL LAW ENFORCEMENT AND FIREFIGHTING AGENCIES

Sec.
201.1 Reissuance and purpose.
201.2 Applicability and scope.
201.3 Definitions.
201.4 Policy and procedures.
201.5 Responsibilities.
201.6 Information requirements.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2202, 2576.

SOURCE: 46 FR 12494, Feb. 17, 1981, unless otherwise noted.

§ 201.1 Reissuance and purpose.

This part is reissued to update established DoD policy and procedures governing the sale of certain DoD-owned surplus personal property to state and local law enforcement and firefighting agencies pursuant to Title 10, U.S.C., section 2576 (Pub. L. 90-500).

§ 201.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, Military Departments, and Defense Agencies (hereafter referred to as "DoD Components").

(b) Its provisions encompass the sale of certain surplus military equipment to state and local law enforcement and firefighting agencies that are located within the United States.

§ 201.3 Definitions.

Terms used in this part are defined in DoD 4160.21-M, "Defense Utilization and Disposal Manual."

§ 201.4 Policy and procedures.

(a) *General.* Under the provisions of 10 U.S.C. 2576, the Department of Defense may sell to state and local law enforcement and firefighting agencies surplus: pistols, revolvers, shotguns, rifles (of a caliber not exceeding .30) and ammunition for these weapons; gas masks; and protective body armor that have survived donation screening, as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and in accordance with the procedures provided in DoD 4160.21-M.

(b) *Demilitarization.* DoD demilitarization requirements are waived for the surplus military equipment authorized to be sold under this part under the provisions of 10 U.S.C. 2576.

(c) *Sales.* Sales to authorized state and local law enforcement and firefighting agencies shall be made in accordance with the procedures in DoD 4160.21-M, under the following conditions:

(1) Items offered for sale shall be limited to those items operationally safe and suitable for use by the agencies specified in DoD 4160.21-M.

(2) The Governor or his authorized representative, of the State in which the requesting agency is located, must certify that the type and quantity of materiel requested are necessary and suitable for the agency's operation.

(3) The Law Enforcement Assistance Administration of the Department of Justice shall determine that the request is valid and appropriate.

(4) Sale prices shall be based on the fair value rates published in DoD Instruction 2140.1,[1] "Pricing of Sales of Defense Articles and Defense Services to Foreign Countries and International Organizations," March 9, 1977.

(5) The expenses of packing, handling, crating, and transporting (accessorial costs) shall be included in the billing prices to the purchaser, in accordance with DoD Instruction 7510.4,[1] "Uniform Policy for Charging Accessorial and/or Administrative Costs Incident to Issues, Sales, or Transfers of Materials, Supplies and Equipment," April 7, 1967. Transportation costs shall be collect, except for parcel post shipments, the cost of which shall be included in the customer's bill.

(6) DoD Components will not stock spare parts for items which may be sold under the authority of this part.

(7) Proceeds from sales will be deposited in accordance with DoD Instruction 7310.1,[1] "Accounting and Reporting for Property Disposal and Proceeds from Sale of Disposable Person-

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 301.

al Property and Lumber or Timber Products," July 10, 1970.

§ 201.5 Responsibilities.

(a) *Heads of DoD Components* shall:

(1) Follow the policy and procedures in this part when selling surplus military equipment to State and local law enforcement and firefighting agencies.

(2) Include sales data in the Program Administrator's Progress Report, submitted in accordance with DoD Directive 4160.21,[1] "DoD Personal Property Utilization and Disposal Program," December 5, 1980.

(b) The *Director, Defense Logistics Agency,* shall ensure that DoD 4160.21-M is revised to reflect the policies and procedures in this part.

§ 201.6 Information requirements.

The reporting requirements in § 201.5(a)(2) have been assigned Report Control Symbol DD-M(A)891.

PART 202—POLICIES AND GUIDELINES GOVERNING ARMED FORCES

Sec.
202.1 Purpose and objective.
202.2 Applicability and scope.
202.3 Policies.
202.4 Authorities and responsibilities.
202.5 Procedures and guidelines.
202.6 Financing.
202.7 Categories of newspapers and publications.
202.8 Surveys and voting assistance.
202.9 Advertising.
202.10 Unified and specified commands.
202.11 Making contracts for civilian enterprise publications.
202.12 Distribution of civilian enterprise publications.
202.13 Civilian enterprise guide or directory.
202.14 Financing.
202.15 Administrative support.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 38 FR 11454, May 8, 1973, unless otherwise noted.

§ 202.1 Purpose and objective.

(a) This part establishes Department of Defense policies governing Armed Forces newspapers and civilian enterprise publications and assigns responsibilities and authorities related thereto.

(b) The primary function of Armed Forces newspapers and civilian enterprise publications, is to support DoD internal information programs and provide service and local news, and other information of concern and interest to DoD personnel (military and civilian), that is not readily available through nongovernmental media. Unified Command newspapers, news bulletins, and summaries have the additional function of providing both United States and world news coverage to their readers. (See § 202.7 for categories of Armed Forces newspapers and civilian enterprise publications.)

§ 202.2 Applicability and scope.

The provisions of this part apply to all DoD components. (Military departments, organization of the Joint Chiefs of Staff, defense agencies, unified and specified commands.)

§ 202.3 Policies.

(a) *Availability of News and Information.* The internal information policies of the Department of Defense require the conduct of activities in an open manner, consistent with the need for security. News and unclassified information not exempted by Part 286 must be accessible to members of the Armed Forces. The DoD policy is that there shall be a free flow of news and information to all military personnel without censorship or news management. News or information which should adversely affect the security of our country, endanger the safety of personnel or undermine their discipline, shall not be disclosed. This shall not be construed to permit the calculating withholding of unfavorable news.

(b) *News coverage and content.* News coverage and content in Armed Forces newspapers and civilian enterprise publications shall be factual and objective. Good taste shall prevail in the selection and handling of news. Morbid, sensational, or alarming details not essential to factual reporting should be avoided.

---

[1] See footnote 1 to § 201.4(c)(4).

BEST COPY AVAILABLE

(1) Newspapers will distinguish between facts and opinion which may be a part of a news story. When an opinion is expressed the person or source will be identified.

(2) News content shall be based on releases, reports, and materials provided by (i) commercial newsgathering agencies where authority exists to use such service; (ii) Office of the Secretary of Defense, military department, Joint Chiefs of Staff or command sources; and (iii) members of the staffs of individual service newspapers.

(3) Syndicated columns and editorial cartoons may be carried by overseas Unified Command newspapers if opposing views or opinions are balanced. A balanced representation of news or opinions shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of syndicated columns and editorial cartoons will be made by a committee appointed by the Unified Commander. The committee will review the balance of such features at least semiannually.

(c) *Political coverage*—(1) *Overseas Unified Command newspapers and news bulletins and news summaries* which normally carry national and world news may include coverage of U.S. political campaign news from commercial news sources authorized in (b)(2) of this section, subject to the consideration that dissemination of such political campaign news will be made on a well-balanced, impartial, and nonpartisan basis.

(2) *Other Armed Forces newspapers and all civilian enterprise publications* may not contain any campaign news, or editorials (staff written or obtained from any other source) dealing with candidates or issue. If civilian enterprise publications carry paid political advertisements, equal opportunity must be afforded to all opposing parties or candidates.

(d) *Polls, surveys and straw votes.* Armed Forces newspapers and civilian enterprise newspapers will adhere to the provisions of Part 64 pertaining to polls, surveys, and straw votes as supplemented in § 202.8.

(e) *Voting assistance.* Armed Forces newspapers will carry information during election years supporting the voting assistance program. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote (see 5 CFR 1602 and § 202.8 of this part).

§ 202.4 Authorities and responsibilities.

(a) *Armed Forces newspapers.* (1) All DoD components are authorized to establish and maintain Armed Forces newspapers as defined in § 202.7 in support of their respective internal information program for the information and morale of their personnel.

(2) When, in the opinion of the Unified Commander overseas, existing commercial news media do not provide access to news available to citizens in the United States, or do not give adequate coverage to service news, the publication of a Unified Command newspaper is authorized, subject to the approval of the Secretary of Defense.

(i) The Commander of an overseas Unified Command is responsible for the publication of a Unified Command newspaper. In carrying out this responsibility he provides policy and administrative support as required. He is authorized to delegate to one of his major commands, administrative support or both internal policy guidance and administrative support for the publication of a Unified Command newspaper.

(ii) The Unified Commander shall select and appoint the editor in chief and the assistant editor in chief of the Unified Command newspaper who shall be military officers.

(b) *Civilian enterprise publications.* (1) Heads of DoD components may authorize their commands or activities to enter into contracts for civilian enterprise publications, for the dissemination of service news, only when the resources of subordinate commands or activities preclude the publication of Armed Forces newspapers; and will provide for appropriate review of such publications within their respective departments or agencies.

(2) A military command or activity will be limited to one civilian enterprise publication in each category as defined in enclosure 2, except that a civilian enterprise newspaper may

carry as an insert or separate inserts a civilian enterprise comic and/or feature supplements.

(3) Civilian enterprise newspapers are intended to serve the interest of a specific military organization or installation. Their content should reflect the aim and purpose of the internal information program of the commander concerned.

(4) The commander responsible for the contract with a civilian enterprise publisher, does not exercise control over the overall operations of the newspaper.

(5) A commander, or his designee, may provide editorial materials and photographs for publication in a civilian enterprise publication. Military and DoD civilian personnel may not be assigned to duty at the premises of the publication or perform any function that is under the direction or supervision of the civilian enterprise publisher or any of his officials or employees.

(6) The commander has the authority and responsibility to prohibit the distribution within his command of any issue of the newspaper he considers to be unlawful or prejudicial to good order or discipline. He also has the authority and responsibility to prohibit the distribution of a civilian enterprise publication carrying an advertisement which he determines would not be in the best interest of his command.

§ 202.5 Procedures and guidelines.

(a) *Operations*—(1) *General.* (i) The principles of operation of Armed Forces newspapers are generally similar to those governing commercial newspapers in the United States.

(ii) Editorial and news policies of Armed Forces newspapers and civilian enterprise publications should serve to increase the knowledge and understanding of subjects of concern to military personnel.

(iii) Armed Forces newspaper editors will conform to applicable regulations, law involving libel and copyright, and postal regulations.

(2) *Civilian enterprise publications.* The policies set forth in §§ 202.11, 202.12, and 202.13 respectively will be observed with respect to:

(i) Contracting for civilian enterprise publications.

(ii) Distribution of civilian enterprise publications.

(iii) Civilian enterprise guides or directors.

(b) *Advertising.* (1) No Armed Forces newspaper may:

(i) Contain commercial advertisements inserted by or on behalf of any private individual, firm or corporation.

(ii) Contain any material which implies that the Department of Defense, or any DoD component endorses or favors a specific commercial product, commodity, or service.

(iii) Subscribe, even at no cost, to commercial or feature wire services whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(2) Civilian Enterprise publications will not carry any advertisement which implies discrimination against any person because of race, religion, national origin, or sex. DoD components will insure that advertisers in civilian enterprise publications serving their commands do not practice such discrimination even if such advertisements offered by such persons do not imply it. Civilian Enterprise newspapers will prominently display in an appropriate location the statement prescribed in § 202.11.

(3) For exceptions see § 202.9.

§ 202.6 Financing.

(a) *Armed Forces newspapers.* The expense of publishing Armed Forces newspapers (including Unified Command newspapers) may be charged to appropriated or nonappropriated funds as provided in the provisions set forth in § 202.14.

(b) *Civilian enterprise newspapers.* Appropriated funds may not be used to pay for any part of the cost of publishing a civilian enterprise publication.

(1) However, nonappropriated funds may be used to buy copies for distribution to personnel when there is good evidence that there is not sufficient revenue from other sources to make publication feasible and approval has been granted the DoD agency or military department concerned.

BEST COPY AVAILABLE

(2) Approval will be granted only under exceptional circumstances where the publication is considered essential for the morale of the activity involved and the publisher has conclusively demonstrated his lack of revenue.

§ 202.7 Categories of newspapers and publications.

There are two categories of newspapers published by, or for, individual military organizations or Defense Agency activities for their personnel. They are: Armed Forces newspapers; civilian enterprise publications.

(a) *Armed Forces newspapers.* These are newspapers published by a military organization or defense agency activity with appropriated or nonappropriated funds. They include all newspapers within this category regardless of format, method of production or frequency of publication. Armed Forces newspapers are classified and defined as follows:

(1) *Authorized newspaper.* A newspaper published by a command or activity to provide its personnel with service and local news and information. It does not necessarily reflect the official views of the Department of Defense, and so states in the masterhead.

(2) *Overseas Unified Command newspaper.* An authorized newspaper such as Stars and Stripes approved by the Secretary of Defense.

(3) *News bulletins and news summaries.* Unofficial publications of local commands and ships which are used when daily newspapers are not readily available.

(b) *Civilian enterprise publications* are published by commercial civilian publishers under contract with Department of Defense activities, and intended for Department of Defense military and civilian personnel. There are three authorized categories of civilian enterprise publications:

(1) *Civilian enterprise newspaper.* A newspaper intended for distribution within a specific command or activity.

(2) *Civilian enterprise supplement.* Comic strips, cartoons, and/or features intended for distribution to military personnel.

(3) *Civilian enterprise guide or directory.* An unofficial publication intended as a handbook of information about a specific locality or geographical area which contains a military activity.

§ 202.8 Surveys and voting assistance.

(a) *Polls, surveys, and straw votes.* (1) The provisions in § 203.3(d) should not be construed to include polls authorized by commands on matters of local interest (i.e., soldier of the week, favorite command athlete).

(2) No Armed Forces newspaper or civilian enterprise publication will conduct a poll, survey, or straw vote relating to a political campaign.

(b) *Federal voting assistance.* (1) During election years, Armed Forces newspapers should also carry factual information about registration and voting laws, especially those on absentee voting requirements of the various States, the District of Columbia, Puerto Rico, and U.S. possessions. Armed Forces newspapers and civilian enterprise publications will use voting materials provided by the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) and military departments.

(2) Civilian enterprise publications should be encouraged to give full coverage to the Federal voting assistance program. Information officers should give every assistance to these publications in publicizing the program.

§ 202.9 Advertising.

Nothing in § 202.5(b) should be construed as prohibiting:

(a) Free and noncommercial listing of personal property or service offered by and to command or activity personnel.

(b) Publicity in Stars and Stripes regarding books, magazines, and other commercial publications available on its newsstands.

(1) Such publicity must be limited to listing of the publications by name and author or the moderate use of displays limited to photo of cover, title, author, and price of such publications;

(2) The masthead must contain the following statement:

"The appearance of displays in this newspaper concerning commercial publications does not constitute an endorsement by the

BEST COPY AVAILABLE

Department of Defense, including the Military Departments."

(c) Factual news stories in Stars and Stripes concerning special commercial tours or entertainment opportunities for DoD personnel and their dependents approved by major commanders.

(d) News and announcements in the Armed Forces newspapers concerning entertainment units affiliated with commercial enterprises and which have been approved under DoD Instruction 1330.13, "Armed Forces Professional Entertainment Program Overseas," March 25, 1970.[1] Such news items should not be set apart, nor be in a format similar to paid advertisements.

(e) Book reviews if written objectively so there is no implication of endorsement by the Department of Defense, including the military departments or any of their elements.

§ 202.10 Unified and specified commands.

(a) Banners of Unified Command newspapers will contain in uppercase the following statement: "AUTHORIZED, UNOFFICIAL PUBLICATION FOR THE U.S. ARMED FORCES." The masthead will contain the following statement: "This newspaper is an authorized unofficial publication for U.S. Armed Forces overseas. (Name of paper) is published in conjunction with the Armed Forces information program of the Department of Defense. Contents of (name of paper) are not necessarily the official view of the U.S. Government, the Department of Defense or the (name of Unified Command)."

(b) When a Unified Commander has delegated all, or part, of his authorities and responsibilities with respect to a Unified Command newspaper to one or more of his component commands to fund for the newspaper, insofar as it involves the use of appropriated funds, it is to be accomplished in accordance with §§ 202.6(a) and 202.14.

(c) Subject to the direction of the secretary of military department concerned, commanders will provide for internal policy guidance, administrative support, and funding for Armed Forces newspapers other than a Unified Command newspaper within their jurisdiction.

§ 202.11 Making contracts for civilian enterprise publications.

(a) When contracts for civilian enterprise publications are made, the following policies will be observed:

(1) All news or information of the Armed Forces made available to a civilian enterprise publication will be made available equally to any other publisher who requests it.

(2) Military personnel on active duty, or civilian personnel of the Department of Defense, may not serve on the editorial staff of a civilian enterprise publication or authorize their names to be carried on the masthead thereof. Subject to DoD Directive 5230.9, "Clearance of Department of Defense Public Information," December 24, 1966,[1] and the approval of the appropriate military command of an installation, military and civilian personnel may contribute articles or military photos, with bylines, to civilian enterprise publications without reimbursements.

(3) A civilian enterprise publication must avoid any statement that is an authorized Armed Forces publication. The use of official seals, insignia, or emblems is prohibited. The name of an Armed Forces installation or activity may not be used in the dateline within the newspaper's banner or folio, except that such datelines may carry the following statement: "Published in the interest of personnel of (name and location of installation or activity)."

(4) Civilian enterprise publications shall have printed in type no smaller than 8-point bold, if available, but in any case no smaller than that carried in the body type, on the front page or cover of each copy, "Published by (name of publishing company), a private firm in no way connected with (appropriate military department or defense agency). Opinions expressed by the publishers or writers herein are their own and are not to be considered an official expression of (appropriate

---

[1] Filed as part of the original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, Pa. 19120, Attention: Code 300.

military department or defense agency). The appearance of advertisements in this publication, to include inserts, does not constitute an endorsement by the (appropriate military department or defense agency) of the products or services advertised."

(b) Contracting for a civilian enterprise publication.

(1) In selecting a civilian enterprise publication for distribution, fair and equal opportunity will be afforded any responsible bidder who may wish to submit a proposal to publish such a publication.

(2) Invited proposals for publishing a civilian enterprise publication may specify within the guidelines outlined in § 202.3 those categories of news, comics, features, and factual information to be carried. Written contracts will be established by the commander in authorizing a civilian publisher to distribute his civilian enterprise publication on the military installation.

(3) In entering into a contract with a civilian enterprise publisher, the contracting officer will consider the best obtainable offer and the price per copy of his newspaper, if any. The military departments and defense agencies concerned will take necessary precautions to assure the competence, reliability, and responsibility of the prospective publisher before contracts are signed.

(4) The contract for a civilian enterprise publication will be for a period not in excess of 2 years.

(5) A separate contract is not required for a civilian enterprise comic and/or feature supplement intended for distribution with a civilian enterprise newspaper, provided that the contract with the newspaper publisher stipulates that any such supplement(s) will have the prior approval of the commander.

(c) Advertising in civilian enterprise publications.

(1) The publisher of a civilian enterprise publication will place his readers and advertisers on notice of the requirements set forth in § 202.5(b)(2) by prominently displaying in an appropriate location in the publication the following statement:

> Everything advertised in this publication must be made available for purchase, use, or patronage without regard to race, creed, color, national origin, or sex of the purchaser, user, or patron. A confirmed violation or rejection of this policy of equal opportunities by an advertiser will result in the refusal to print advertising from that source.

(2) It is the responsibility of the installation commander to insure an environment conducive to the successful performance of his mission, and the effective preserving of morale and discipline within his command. Having this responsibility, each military commander must determine whether the running of a particular advertisement in a local civilian enterprise publication serving his installation would, or would not interfere with the successful performance of such mission. In the context of an advertisement, this would have to take into account the local climate, the content of the proposed advertisement, and the identity and reputation of the requesting organization, among other factors.

(i) Department of Defense Directive 1325.6, "Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces," September 12, 1969,[1] in addition to implementing service regulations, provides that the commander makes the decision for distributing or not distributing on his installation a newspaper containing an advertisement which promotes a situation involving potential riots or other civil disturbances or when the distribution of such an advertisement would present a clear danger to loyalty, discipline or morale of his personnel.

(ii) A commander who controls distribution of a civilian enterprise publication on his installation either by contract or agreement, should acquaint the publisher of the publication with these criteria to avoid the acceptance of advertising which would be detrimental to the accomplishment of the military mission or in any way imply condonement of, or endorsement of such activity.

(iii) Inasmuch as the installation newspaper is distributed through means other than the official outlets as cited in paragraph III, A. 1. of DoD Directive 1325.6,[1] the commander may prohibit the distribution on the installation if he determines that it would not be in the best interest of his command.

---

[1] Filed as part of the original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, Pa. 19120, Attention Code 300.

§ 202.12 Distribution of civilian enterprise publications.

Civilian enterprise newspapers will adhere to the provisions of 32 CFR 43.3(b)(2) (viii) and (ix) and 43.3(e).

(a)(1) Civilian enterprise publications may be distributed through official channels without cost to the publisher, provided this will not require additional expenditures of appropriated funds.

(2) With concurrence from the DoD element concerned, a publisher of a civilian enterprise publication may arrange for direct distribution to the intended readership.

(3) A DoD element may prohibit the distribution of a specific issue of a civilian enterprise newspaper which violates the provisions of the contract or as provided under §§ 202.4(b)(6) and 202.11(c)(2).

(4) An Armed Forces newspaper will not be distributed as an insert to a civilian enterprise newspaper, nor will a civilian enterprise newspaper be distributed as an insert to an Armed Forces newspaper.

(5) Subject to the approval of the responsible DoD element, a civilian enterprise comic and/or feature supplement with commercial advertising may be distributed as an insert to an Armed Forces newspaper provided: (i) A fair and equal opportunity is offered to responsible organizations or persons to compete for this privilege as provided herein; and (ii) the front page of the supplement carries the statement prescribed in § 202.11(a)(4), and each succeeding page carries a statement in similar type to the effect that the appearance of a commercial advertisement does not constitute an endorsement of the product or service by the Department of Defense.

(b) A military commander may afford the opportunity to reputable publishers to sell or give away publications at the activity he commands but such publication shall not be distributed through official channels except as provided in paragraph (a)(2) of this section.

§ 202.13 Civilian enterprise guide or directory.

(a) The name of the publisher of a civilian enterprise guide or directory will be printed prominently just above the disclaimer on the front page or cover. The word "guide" or "directory" which appears on the front page or cover, will be preceded by "Unofficial" in type at least as large as that in which the word "guide" or "directory" is printed.

(b) The format for the guide or directory will be designed so that the publication cannot be mistaken for an official guide or directory. A suggested front page or cover design for a guide or directory is filed as part of this original document. Another design may be used but it must be equally effective in making plain the unofficial nature of the publication.

(c) In addition to the above, contracts for the publication of a guide or directory will provide that:

(1) No organizational charts or listing of the command will be included in the publication.

(2) The publication will not contain the base telephone numbers of personnel or organizational elements, or the home addresses and telephone numbers of personnel (32 CFR Part 43). However, at the discretion of the commander, emergency and service numbers, i.e., hospital, military police, fire, etc., may be included.

(3) An alphabetical listing of personnel attached to the base or activity without telephone numbers may be included at the discretion of the commander.

(4) The unofficial nature of the guide or directory will be made plain by the publisher to every person or firm solicited for advertising.

(5) On one of the inside pages, the publisher's name, permanent address, and telephone number will be shown

---

[1] Filed as part of the original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, Pa. 19120, Attention: Code 300.

on a masthead. Neither the name of the installation nor an onpost address may be included in the masthead or in the publisher's letterhead or mailing address.

§ 202.14 Financing.

(a) The expense of financing Armed Forces newspapers (including Unified Command newspapers) is to be charged first to nonappropriated fund revenues, if any, derived from the publication of such newspapers.

(b) Appropriated fund expenditures, when nonappropriated fund revenues are not derived from publication or are insufficient, are authorized to the extent essential to the support of the internal information programs of the military departments and defense agencies by Armed Forces newspapers established and maintained under the provisions of this part.

(c) Financing of Unified Command newspapers, insofar as it involves the use of appropriated funds, is to be provided by the military department responsible for the administrative and logistic support of the Headquarters of the Unified Command concerned (see DoD Directive 5100.3, "Support of the Headquarters of Unified/Specified and Subordinate Unified Commands," March 16, 1967 (32 FR 5569)) except where the administrative support of the Unified Command newspaper has been delegated to a different military department. Such delegation will include responsibility for the programing, budgeting, and financing for the newspaper in accordance with the guidelines set forth in this part.

(1) Appropriated fund support for Unified Command newspapers may be provided by other military departments when necessary for efficient operation. Such appropriated fund support shall be subject to reimbursement by the responsible military department (paragraph (c) of this section) except the reimbursement will not be in the form of buildings, facilities, and utilities of subordinate activities of the Unified Command newspapers.

(2) Appropriated fund support of these subordinate activities will be provided in accordance with service directives, regarding financial support of morale, welfare, and recreational facilities.

§ 202.15 Administrative support.

(a) The administrative and logistic services necessary to publish an Armed Forces newspaper are furnished normally by the military departments or one of their subordinate activities. These include, but are not limited to:

(1) The procurement of material, equipment, facilities and supplies;

(2) Adherence to procurement regulations;

(3) Negotiation of interservice agreements;

(4) Contracting;

(5) Legal advice; and

(6) Personnel administration.

(b) Within the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs), the Office of Information for the Armed Forces (IAF) is responsible for supporting the Armed Forces information program (AFIP) and promoting high professional standards in Armed Forces newspapers. IAF provides the following press materials and services:

(1) *American Forces Press Service.* A clipsheet, published weekly, carries text and art which may be included in Armed Forces newspapers. Illustrations appearing in the press service are provided upon request in matrix form for letterpress papers; in electronically-cut stencils for mimeograph papers; and in preprinted paper masters for multilithduplicated papers. Photo-offset papers may use the illustrations in the form in which they appear in the press service.

(2) *Commander Digest.* A publication containing Department of Defense policies, Seat-of-Government and other news and information of interest to commanders and service personnel. Reproduction of contents is authorized.

(3) *Armed Forces newspaper guide.* A manual for service personnel performing editorial duties on Armed Forces newspapers.

(4) *Armed Forces news style guide.* A guide designed to help Armed Forces newspaper staffs standardize their style by providing guidance on such

matters as abbreviations, punctuation, and spelling.

(5) *Advice to editors.* Advice concerning the organization and operations of Armed Forces newspapers and detailed critiques of individual Armed Forces newspapers are available upon request through channels prescribed by the Military Department or Defense Agency concerned.

(c) Publications and activities eligible to receive IAF materials and services:

(1) All Armed Forces newspapers, whether published with appropriated funds or nonappropriated funds.

(2) Newspapers published by and for civilian employees of the Armed Forces of the United States.

(3) Civilian Enterprise newspapers with approval through channels of the Military Department of Defense Agency concerned.

(4) Armed Forces newspapers receiving copyrighted materials from ASD (M. & R.A.) are authorized to use them. Civilian enterprise newspapers may not use such copyrighted materials unless authorized by ASD (M. & R.A.) or his designee.

(5) Upon request and approval, the following activities may be provided with certain AFPS printed press materials:

(i) Headquarters, such as the Headquarters of Unified Commands, armies, naval districts, major air commands, and numbered air forces, which have a policy supervisory interest in Armed Forces newspapers.

(ii) Armed Forces radio and television (AFRT) networks and outlets.

(iii) Periodicals issued by the military services.

(iv) Isolated detachments at which Armed Forces newspapers are not readily obtainable and whose parent organizations do not publish an Armed Forces newspaper, including Military Assistance Advisory Groups and Missions, and organizations such as the United Service Organizations, Inc. (USO).

(d) Use of IAF materials. Materials may be edited or revised by editors of Armed Forces newspapers as required by newspaper space limitations or as advisable for local appeal, provided that the original meaning is retained. When such material is edited or revised, accuracy and conformance with accepted standards of good taste will be maintained.

(e) Procedures.

(1) Requests for materials and services will be forwarded from local installations or activities through channels prescribed by the military department or defense agency concerned to the Office of Information for the Armed Forces, OASD (M. & R.A.), Attn.: American Forces Press Service (AFPS), Washington, D.C. 20305.

(2) Requests should include name of newspaper, frequency of publication (i.e., daily, weekly, monthly, etc.), and method of publication (i.e., multilith, offset, etc.). If the newspaper is a civilian enterprise publication, the requesting office must so state.

(3) An Armed Forces newspaper receiving materials will forward one copy of each issue to AFPS. Issues of civilian enterprise publications will be forwarded in one copy by the information officer having normal liaison with the publisher.

(4) Armed Forces newspaper editors and information officers are encouraged to provide AFPS with news releases and photographs relating to their activity.

PART 203—SMOKING IN DoD OCCUPIED BUILDINGS AND FACILITIES

Sec.

203.1 Purpose.
203.2 Applicability and scope.
203.3 Background.
203.4 Policy.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 42 FR 57123, Nov. 1, 1977, unless otherwise noted.

§ 203.1 Purpose.

This instruction establishes Department of Defense (DoD) procedures for control of smoking in DoD occupied buildings and facilities.

§ 203.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Army-Air

Force Exchange Service. This part applies in all DoD occupied facilities. It does not cancel or supersede other instructions where smoking is controlled because of fire, explosive, or other safety considerations.

§ 203.3 Background.

The Surgeon General of the United States has determined that the smoking of tobacco can constitute a hazard to health. DoD recognizes the right of individuals working or visiting in DoD occupied buildings to an environment reasonably free of contaminants. DoD also recognizes the right of individuals to smoke in such buildings, provided such action does not endanger life or property, cause discomfort or unreasonable annoyance to nonsmokers, or infringe upon their rights.

§ 203.4 Policy.

(a) The smoking of tobacco products within DoD occupied space shall be controlled in accordance with the following guidelines:

(1) *Auditoriums.* Smoking shall not be permitted in auditoriums. Prompt action shall be taken to post appropriate no-smoking signs in these areas. Ash trays should be removed from these areas and receptacles may also be placed just inside the auditorium so that visitors may dispose of cigarettes, etc., when they become aware of the smoking restriction.

(2) *Eating facilities.* No-smoking areas will be established in eating facilities in DoD occupied buildings wherever practicable. Where appropriate this may be accomplished by agreement between the responsible DoD official and a concessionaire, and then included as a provision in future amendments and new contracts. A no-smoking area should be designated and posted based on an estimate of smoking and nonsmoking patrons served.

(3) *Elevators.* Elevators shall be designated as no-smoking areas.

(4) *Shuttle vehicles.* Smoking shall be prohibited in shuttle vehicles.

(5) *Medical care facilities.* In medical care facilities, smoking shall be restricted to staff lounges, private offices, and specially designated areas. Smoking is permitted in visitor waiting areas only where space and ventilation capacities permit division into smoking and non-smoking sections.

(6) *Conference and classrooms.* Smoking in conference rooms and classrooms shall be prohibited.

(7) *Work areas.* In establishing and continuing a smoking policy in work areas under their jurisdiction, officials must strive to maintain an equitable balance between the rights of nonsmokers and smokers. Smoking shall be permitted in private offices. In common work spaces shared by smokers and non-smokers, smoking shall be permitted only if ventilation is adequate to remove smoke from a work area and provide an environment that is healthful. Work space may be planned to accommodate the preferences of each group, provided that (a) efficiency of work units will not be impaired; and (b) additional space or costly alterations will not be required. As a general rule, a minimum ventilation rate of 10 cubic feet of fresh air per minute per person is recommended to remove smoke from a work area and provide a healthful environment.

(8) *Corridors, lobbies, and restrooms.* Except in medical care facilities, there should be no limitation on smoking in corridors, lobbies, and restrooms as persons are not in these areas for long periods of time.

(b) Emphasis should be placed on educational programs to discourage smoking. These programs should focus on high risk personnel such as those with chronic bronchitis, emphysema, asthma, and coronary heart disease and upon special occupational groups such as asbestos workers. Programs should include lectures, films, pamphlets, and posters, and should be updated frequently to utilize the latest available medical research information on smoking and health.

PART 204—TEST AND EVALUATION

Sec.

204.1 Purpose.
204.2 Scope and applicability.
204.3 Policies and principles.
204.4 Waivers.
204.5 Exclusions.

Sec.
204.6 Responsibilities of the Deputy Director of Defense Research and Engineering, Test and Evaluation (DD(T&E)).
204.7 Reporting requirements.

AUTHORITY: 5 U.S.C. 301, 552.

SOURCE: 38 FR 5346, Feb. 28, 1973, unless otherwise noted.

§ 204.1 Purpose.

This part establishes policy for the conduct of test and evaluation by the Military Departments and Defense Agencies (hereinafter referred to collectively as "DoD Components") in the acquisition of defense systems (§ 204.2 through § 204.5). In addition, it codifies the responsibilities of the Deputy Director of Defense Research and Engineering, Test and Evaluation (DD(T&E)) (§ 204.6).

§ 204.2 Scope and applicability.

The provisions of this part encompass major programs of defense systems acquisition as designated by the Secretary of Defense (described in § 213.2 of this subchapter) and apply to all DoD Components that are responsible for such programs. In addition, it provides principles to be applied by the DoD Components in their acquisition of defense systems that do not fall in the "major acquisition programs" category.

§ 204.3 Policies and principles.

(a) *General.* (1) Test and evaluation shall be commenced as early as possible and conducted throughout the system acquisition process as necessary to assist in progressively reducing acquisition risks and in assessing military worth.

(2) Acquisition schedules will be based, inter alia, upon accomplishing test and evaluation milestones prior to the time that key decisions which commit significant added resources are to be made.

(3) Before the initiation of development of a new system, test and evaluation using existing systems, or modifications thereto, may be appropriate to help define the military need for the proposed new system and to estimate its military utility. Determination of military worth, need, and utility will be accomplished in accordance with other DoD directives.

(4) All test and evaluation activities shall consider environmental issues and provide assessments for review as early as possible in the test planning cycle. (See Part 214 of this subchapter.)

(b) *Development Test and Evaluation (D.T. & E.).* D.T. & E. is that test and evaluation conducted to: Demonstrate that the engineering design and development process is complete; demonstrate that the design risks have been minimized; demonstrate that the system will meet specifications; and estimate the system's military utility when introduced. D.T. & E. is planned, conducted, and monitored, by the developing agency of the DoD Component, and the results thereof are reported by that agency to the responsible Military Service Chief or Defense Agency Director.

(1) D.T. & E. shall be started as early in the development cycle as possible and include testing of component(s), subsystem(s), and prototype or preproduction model(s) of the entire system. Compatibility and interoperability with existing or planned equipments and systems shall be tested.

(2) During the development phase following the Program Initiation Decision (Milestone I), adequate D.T. & E. shall be accomplished to demonstrate that technical risks have been identified and that solutions are in hand.

(3) During the full-scale development phase and prior to the first major production decision, the D.T. & E. accomplished shall be adequate to insure: That engineering is reasonably complete; that all significant design problems (including compatibility, interoperability, reliability, maintainability, and logistical considerations) have been identified, and that solutions to the above problems are in hand.

(4) For those systems which have a natural interface with equipment of another Component or may be acquired by two or more Components, joint D.T. & E. may be required. Such joint testing will include participation and support by all affected Components as appropriate.

(c) *Operational Test and Evaluation (O.T. & E.).* O.T. & E. is that test and evaluation conducted to estimate the prospective system's military utility, operational effectiveness, and operational suitability (including compatibility, interoperability, reliability, maintainability, and logistic and training requirements), and need for any modifications. In addition, O.T. & E. provides information on organization, personnel requirements, doctrine, and tactics. Also it may provide data to support or verify material in operating instructions, publications, and handbooks. O.T. & E. will be accomplished by operational and support personnel of the type and qualifications of those expected to use and maintain the system when deployed, and will be conducted in as realistic an operational environment as possible. O.T. & E. will normally be conducted in phases, each keyed to an appropriate decision point. During full-scale development O.T. & E. will be accomplished to assist in evaluating operational effectiveness and suitability (including compatibility, interoperability, reliability, maintainability, and logistic and training requirements). O.T. & E. will be continued as necessary during and after the production period to refine these estimates, to evaluate changes, and to reevaluate the system to insure that it continues to meet operational needs and retains its effectiveness in a new environment or against a new threat.

(1) In each DoD Component there will be one major field agency (or a limited number of such major field agencies) separate and distinct from the developing/procuring command which will be responsible for O.T. & E. and which will:

(i) Report the results of its independent test and evaluation directly to the Military Service Chief or Defense Agency Director.

(ii) Recommend directly to its Military Service Chief or Defense Agency Director the accomplishment of adequate O.T. & E.

(iii) Insure that the O.T. & E. is effectively planned and conducted.

(2) In addition, each DoD Component will provide within its immediate headquarters staff a full-time, strong, focal point organization to assist the independent O.T. & E. field agency and to keep its Military Service Chief or Defense Agency Director fully informed as to needs and accomplishments.

(3) Operational testing should be separate from development testing. However, development testing and early phases of operational testing may be combined where separation would cause delay involving unacceptable military risk, or would cause an unacceptable increase in the acquisition cost of the system. When combined testing is conducted, the necessary test conditions and test data required by both the DoD Component developing agency and O.T. & E. agency must be realized. In addition, the separate Component O.T. & E. agency must: Insure that the combined test is so planned and executed as to provide the necessary operational test information; participate actively in the test; and provide separate evaluation of the resultant operational test information.

(4) Acquisition programs will be so structured that at least an initial phase of operational test and evaluation (I.O.T. & E.) will be accomplished prior to the first major production decision adequate to provide a valid estimate of expected system operational effectiveness and suitability (including compatibility, interoperability, reliability, maintainability, and logistic and training requirements). Pilot production items will be employed for I.O.T. & E. wherever practicable. Prototypes, if they are reasonably representative of the expected production items, may be employed, where there otherwise would be delay involving unacceptable military risk or unacceptable increased acquisition costs.

(5) For more complex systems, additional phases of O.T. & E. may be required and performed with pilot or preproduction items subsequent to the first major production decision but prior to the availability of first production items. When production items are available in sufficient quantity, follow-on phases of O.T. & E. adequate to meet the full objective outlined above will be accomplished by

the appropriate DoD Component's independent O.T. & E. agency.

(6) For those systems which have a natural interface with equipment of another Component, or may be acquired by two or more Components, joint O.T. & E. will be conducted where required. Such joint testing will include participation and support by all affected Components as appropriate.

(d) *Test and evaluation for major ships of a class.* The long design, engineering, and construction period of a major ship will normally preclude completion of the lead ship and accomplishment of test thereon prior to decision to proceed with follow ships. In lieu thereof, successive phases of D.T. & E. and O.T. & E. will be accomplished as early as practicable at test installations and on the lead ship so as to rapidly reduce risks and thereby minimize the need for modification to follow ships.

(1) When combat system complexity warrants, there will be constructed a combat system test installation wherein the weapon, sensor, and information processing subsystems are integrated through their interfaces in the manner expected in the ship class. Adequate initial D.T. & E. and O.T. & E. of the integration of those subsystems will be accomplished thereon prior to the first major production decision on follow ships. To the degree practicable first generation subsystems will have been approved for service use prior to the initiation of integrated operational testing. Where subsystems cannot be service approved prior to the initial operational testing, their integration will be tested at the test site installation as early as possible in their acquisition cycle.

(2) For new ship types incorporating major technical advancements not earlier proven in hull or non-nuclear-propulsion design, a prototype incorporating these advancements will be employed. If the major technological advancements are contemplated in only some features of the hull or non-nuclear-propulsion design, the test installation need incorporate only the applicable new features. Adequate test and evaluation on such prototype will be completed prior to the first major production decision on follow ships.

(3) The prototyping of Navy nuclear propulsion plants will be accomplished in accordance with the methods in use by the Atomic Energy Commission. Construction of the lead and follow ships will be done in the sequence now being used.

(4) For all new ship classes, continuing phases of O.T.&E. on the lead ship will be conducted at sea as early in the acquisition process as possible for specified systems or equipments and, if required, full ship operational evaluation to the degree feasible.

(5) A description of the subsystems to be included in any test site or test prototype, the schedules to accomplish test and evaluation, and any exceptions to the above policies will be set forth in the initial and any subsequent DCPs and approved by the Secretary of Defense.

(e) *Test and evaluation for one-of-a-kind systems.* For one-of-a-kind systems, or systems involving procurement of only a very few over an extended period, the principles of D.T. & E. of component(s), subsystem(s), and prototype or first production model(s) of the entire system will be applied. Compatibility and inter-operability with existing or planned equipments will be tested. O.T. & E. will be conducted as early as possible by the O.T. & E. agency as necessary to provide a valid estimation of operational suitability and effectiveness.

(f) *Production Acceptance Test and Evaluation (P.A.T. & E.).* P.A.T. & E. is test and evaluation of production items to demonstrate that the items procured fulfill the requirements and specifications of the procuring contract or agreements. It is the responsibility of each DoD Component to accomplish the necessary P.A.T. & E. throughout the production phase of the acquisition process.

(g) Integrated T. & E. Plans. The DoD Component will prepare as early as possible in the acquisition process, and prior to the initiation of full-scale development, an overall test and evaluation plan to identify and integrate the effort and schedules of all T. & E. to be accomplished and to insure that all necessary T. & E. is accomplished

BEST COPY AVAILABLE

prior to the key decision points. This plan will be kept current by the DoD Component.

(h) *Defense Systems Acquisition Review Council (DSARC)/Development Concept Paper (DCP) Procedures for Major Defense Systems.* (1) The DCP prepared for use at the time of the Program Initiation Decision (Milestone I) for a major defense system will identify the critical questions and areas of risk to be resolved by test and evaluation. It will also provide a summary statement of test objectives, schedules, and milestones. The DSARC in its review will determine the adequacy of the statement of questions and issues and of test objectives and schedules.

(2) When the DoD Component proposes to initiate full-scale development, the revised DCP will give the results of T. & E. accomplished to that date, an updated statement of critical questions and areas of risk still needing test to resolve, and a detailed statement of test plans and milestones. The DSARC will assess and comment to the Secretary of Defense as to the adequacy of T. & E. progress and of planned T. & E. to occur prior to the first major production decision.

(3) The DSARC in its review prior to the first major production decision will assess and comment to the Secretary of Defense as to the adequacy of test results to support a decision to proceed with major production and the adequacy of plans and schedules for any remaining testing.

(4) In case of DCP revisions and DSARC reviews subsequent to the first major production decision, an updated assessment of test results and plans and schedules for additional test and evaluation will be presented.

§ 204.4 Waivers.

(a) In the case of major programs, any waiver of the accomplishment of the T. & E. as outlined in the approved DCP will be granted only by the Secretary of Defense.

(b) For other than major programs, the DoD Components will designate the minimum threshold for definition of less than major programs. For such programs the waiver of the required T. & E. will:

(1) Within the Military Departments, be granted only by the Secretary, the Under Secretary, or such Assistant Secretary as the Secretary may designate.

(2) Within the Department of Defense Agencies, be granted only by the Director.

§ 204.5 Exclusions.

Test and evaluation of nuclear weapons subsystems which are governed by other joint DoD/AEC agreements are excluded from the foregoing provisions of this part.

§ 204.6 Responsibilities of the Deputy Director of Defense Research and Engineering, Test and Evaluation (DD(T&E)).

(a) The DD(T&E) has across-the-board responsibility for OSD in test and evaluation matters. This responsibility includes:

(1) Reviewing test and evaluation policy and procedures applicable to the Department of Defense as a whole and recommending changes he believes appropriate directly to the Secretary of Defense.

(2) Monitoring closely the test and evaluation planned and conducted by the DoD Components for major acquisition programs and for such other programs as he believes necessary.

(3) Assisting in the preparation of, and/or reviewing, the test and evaluation sections of DCP's and program memoranda (PM's).

(4) For major programs, reporting to the DSARC and the Worldwide Military Command and Control System Council as appropriate, and directly to the Secretary of Defense for such programs, at each major milestone decision point his assessment as to the adequacy of the identified critical issues and questions to be resolved by test and evaluation, test plans and schedules, and the adequacy of the accomplished T. & E. to justify the action recommended for that milestone decision.

(5) Monitoring closely such joint testing as is accomplished by the DoD Component in connection with their planned acquisition of specific systems. In addition, initiating and co-

ordinating the accomplishment of such additional joint testing as is necessary, with specific delegation to an appropriate Component (or Components) of all practical aspects of the joint test.

(6) Coordinating and reviewing the test and evaluation of foreign systems for possible DoD use.

(7) Fulfilling OSD responsibilities for the National and major Service test facilities.

(8) Monitoring, only to the extent required to determine the applicability of results to weapon system acquisition or modification, that test and evaluation:

(i) Directed by the Joint Chiefs of Staff which relates to the single integrated operational plan (SIOP) operational factors.

(ii) Conducted primarily for development or investigation of organizational or doctrinal concepts.

(b) To accomplish these duties, statements of critical issues for DCP's/PM's, test plans for their resolution, and test results will be made available to DD(T&E) at his request as early as developed.

§ 264.7 Reporting requirements.

The reporting requirements prescribed herein are exempt from formal approval and control in accordance with III.D.3., of DoD Directive 5000.19, "Policies for the Management and Control of DoD Information Requirements," June 2, 1971.[1]

PART 205—DEFENSE AUDIOVISUAL AGENCY

Sec.
205.1 Purpose.
205.2 Applicability and scope.
205.3 Mission.
205.4 Organization and management.
205.5 Responsibilities and functions.
205.6 Relationships.
205.7 Authority.
205.8 Administration.
205.9 Definitions.
205.10 Delegations of authority.

AUTHORITY: 10 U.S.C. 133.

SOURCE: 44 FR 51571, Sept. 4, 1979, unless otherwise noted.

§ 205.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, United States Code, this part establishes:

(a) The Defense Audiovisual Agency (DAVA); and (b) the Defense Audiovisual Steering Committee (DAVSC) with responsibilities, functions, authorities, and relationships as outlined below.

§ 205.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereinafter referred to as "DoD Components").

§ 205.3 Mission.

(a) The DAVA shall provide centrally-managed production, acquisition, distribution, and depository support and services for selected audiovisual products to all DoD Components.

(b) The DAVSC shall provide advice and assistance to the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) on matters relating to DoD audiovisual activities.

§ 205.4 Organization and management.

(a) The DAVA is established as a separate agency of the Department of Defense under the authority, direction, and control of the ASD(PA). It shall consist of a Director and subordinate organizational elements that are established by the Director within resources assigned by the Secretary of Defense.

(b) The DAVSC is established as an audiovisual policy committee reporting to the ASD(PA). It shall consist of the following:

(1) A Chair, who shall be designated by the ASD(PA).

(2) One representative from each of the Military Departments and the DAVA.

(3) An Executive Secretary, who shall be designated by the ASD(PA).

§ 205.5 Responsibilities and functions.

(a) The Director, DAVA, shall: (1) Organize, direct, and manage the

---

[1] See footnote 1 to § 202.11(c)(2).

DAVA and all resources assigned to the DAVA.

(2) Perform production, acquisition, and reproduction of all motion picture films, video and audio tapes and discs, still photographs, multimedia and other audiovisual media:

(i) That meet any one of the following: (A) Are intended for use by more than one DoD Component;

(B) Are intended for public exhibition;

(C) Are commercial or contract productions (except when audiovisual products are only part of a larger information or technical package).

(D) Are adoptions from other Federal agencies.

(E) Involve production or acquisition costs in excess of $50,000.

(F) Are required by DoD Components which have not been authorized their own audiovisual production or acquisition capabilities.

(ii) But that exclude: (A) Audiovisual documentation integral to the performance of reconnaissance, surveillance, intelligence, criminal and legal investigative, medical diagnostic, or RDT&E functions; or to the operation of a weapon system or command and control center.

(B) Reprographic, cartographic, microfilm, or microfiche products.

(C) Acquisition and distribution of commercial entertainment programs distributed by the American Forces Radio and Television Service.

(3) Manage and operate a system for the distribution of DAVA audiovisual products and such other audiovisual products as the ASD(PA) may, for reasons of economy and efficiency, assign to this system.

(4) Manage and operate depositories for the archival storage of Department of Defense audiovisual products.

(5) Test and evaluate off-the-shelf commercial audiovisual equipment and report findings and make certifications to Defense Audiovisual Standardization Panel of the Defense Materiel Specifications and Standards Board.

(6) Develop and maintain an audiovisual data base as required by the ASD(PA) and in accordance with DoD Directive 5000.19,[1] "Policies for the Management and Control of Information Requirements," March 12, 1976, and DoD Directive 5000.11,[1] "Data Elements and Data Codes Standardization Procedures," April 27, 1965, for the management of the DoD Audiovisual Program, to include the preparation of departmental reports required by Office of Management and Budget Circular A-114, "Management of Federal Audiovisual Activities," April 13, 1978.

(7) Perform such other related functions as are assigned by the ASD(PA).

(b) The DAVSC shall meet periodically to: (1) Consider questions of policy with respect to DoD Audiovisual activities.

(2) Facilitate exchange of information among the ASD(PA), the audiovisual representatives of the Military Departments, and the Director, DAVA.

(3) Provide advice and recommend policy to the ASD(PA).

(c) The ASD(PA) shall: (1) Recommend to the Secretary of Defense policies for the administration of DoD Audiovisual activities.

(2) Monitor, evaluate, and provide guidance regarding the implementation of DoD Audiovisual policies, procedures, and technical standards by DoD Components.

(3) Provide policy and operational direction to the Director, DAVA.

§ 205.6 Relationships.

(a) For the performance of assigned functions, the Director DAVA, shall: (1) Coordinate actions, as appropriate, with other DoD Components having collateral or related functions in the field of assigned responsibility.

(2) Maintain appropriate liaison with other DoD Components, as well as other governmental and non-governmental agencies, for the exchange of information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other Government agencies wherever practical to avoid duplica-

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

tion and achieve maximum efficiency and economy.

(b) heads of DoD Components will coordinate with the Director, DAVA, on all matters related to the mission, responsibilities and functions of DAVA.

§ 205.7 Authority.

The Director, DAVA, is specifically authorized to: (a) Obtain such information, advice, and assistance from other DoD Components, consistent with the policies and criteria of DoD Directive 5000.19,[1] as necessary to carry out effectively DAVA programs and activities.

(b) Communicate directly with appropriate personnel in the Military Departments and other DoD Components on matters related to DAVA programs and activities.

(c) Exercise the administrative authorities contained in § 205.10 of this part.

§ 205.8 Administration.

(a) The Director, DAVA, shall be appointed by the Secretary of Defense.

(b) DAVA shall be authorized personnel, facilities, funds, and other administrative support that the Secretary of Defense considers necessary.

(c) The Secretaries of the Military Departments or designees shall assign military personnel to DAVA in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Other DoD Components shall provide administrative support required for DAVA through interservice support agreements.

§ 205.9 Definitions.

(a) *Acquisition*. The process through which audiovisual products are obtained from commercial sources.

(b) *Audiovisual (AV)*. The use of sound or visual imagery for the purpose of communicating information.

(c) *AV activities*. Organizations or functions relating to the management of AV resources or the provision of AV services and products. (Includes equipment, facilities, products, personnel, supplies, accessories, maintenance, and support.)

(d) *AV depository*. An archive established to preserve AV materials and records.

(e) *AV documentation*. Audiovisual recording of events as they occur, i.e., not generally controlled by the recording crew. The two general types are *operational documentation* (sometimes referred to as "combat documentation"), which includes photojournalism, and *technical documentation*, which includes medical documentation, optical instrumentation, and gun- and strike-camera imagery.

(f) *AV equipment* includes: (1) Items of a durable nature used for recording, producing, reproducing, processing, and exhibiting AV products that are capable of continuing or repetitive use; and (2) items that perform an AV function as an integral part of a non-AV systems or devices and that, when permanently removed, can be identified as end-items of equipment.

(g) *AV facilities*. Physical plants in which AV activities are housed.

(h) *AV products*. Material containing sound or visual imagery that conveys information. (Includes slides and other forms of still projection, still photographs, graphics, film strips, motion pictures, videotapes and videodiscs, and audio recordings on tape or disc.) AV production is also a form of AV product, but is usually addressed separately.

(i) *AV production*. The process and the result of combining or arranging separate or combined audio or visual products in continuity according to a plan or script.

(j) *AV services*. Those functions that: result in obtaining or preparing an AV product; support existing AV products (e.g., distribution and depository operations); or use existing AV products, equipment, or activities to support other functions (e.g., projection services, other presentation systems, or operation of conference facilities).

§ 205.10 Delegations of authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, DAVA or, in the absence of the Director, the person acting for the Director is hereby delegated authority, as required in the administration and operation of DAVA to:

---

[1] Copies available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Stock Number 722-609/94.

(a) Exercise the power vested in the Secretary of Defense by 5 U.S.C. 302 and 5 U.S.C. 3101 pertaining to the employment, direction, and general administration of civilian personnel.

(b) Fix rates of pay for wage rate employees exempted from the Classification Act by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Office of Personnel Management on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C 2903(b).

(e) Establish an Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government for suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, in accordance with the provisions of 5 U.S.C. 4503 and applicable Civil Service Regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532, Executive Order 10450, and 32 CFR Part 156.

(1) Designate positions as "sensitive";

(2) Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not terminate the services of, an employee in the interest of national security.

(g) Clear civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of 32 CFR 156 and Executive Order 11652.

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and 42 U.S.C. 405(p)(1) and (2).

(i) Authorize and approve overtime work for civilian officers and employees in accordance with the provisions of subchapter V, Chapter 55, title 5, U.S. Code, and applicable Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for civilian employees in accordance with the Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel for military personnel in accordance with Joint Travel Regulations, Volume I for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required, pursuant to the provisions of 5 U.S.C. 5703.

(k) Approve the expenditures of funds available for travel by military personnel for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances when the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of 44 U.S.C. 3102.

(m) Establish and use imprest funds for making small purchases of materi al and services, other than personal, when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DoD Directive 5100.17, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Fund," March 5, 1973.

(n) Authorize the publication of advertisement, notices, or proposals in newspapers, magazines, or other public periodicals, consistent with 44 U.S.C. 3702.

(o) Establish and maintain appropriate property accounts, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of this Part, pursuant to DoD Directive 5200.8 "Security of Military Installations and Resources," July 29, 1980.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980.

(r) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies, in accordance with the provisions of DoD Directive 4000.19, "Interservice, Interdepartmental, and Interagency Support," October 14, 1980, as required for the effective performance of assigned responsibilities and functions.

(s) Enter into and administer contracts directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish assigned responsibilities and functions. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(t) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

The Director, DAVA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

[46 FR 9083, Jan. 28, 1981]

PART 206—PERFORMANCE MEASUREMENT FOR SELECTED ACQUISITIONS

Sec.

206.1 Reissuance and purpose.
206.2 Applicability and scope.
206.3 Objectives.
206.4 Policy.
206.5 Responsibilities.
206.6 Cost/schedule control system criteria

AUTHORITY: Rev. Stat. 161, 2202, 2301-2314, 70A Stat. 120, 127-133; 5 U.S.C. 301, 10 U.S.C. 2202, 2301-2314.

SOURCE: 43 FR 16975, Apr. 21, 1978, unless otherwise noted.

§ 206.1 Reissuance and purpose.

This part sets forth objectives and criteria for the application of uniform DoD requirements to selected defense contracts. The provisions of this part specifically require the use of Cost/Schedule Control Systems Criteria (C/SCSC) in selected acquisitions.

§ 206.2 Applicability and scope.

(a) The provisions of this part apply to all Military Departments and Defense Agencies (hereafter referred to as "DoD Components") which are responsible for acquisitions during systems development and production.

(b) The acquisitions governed by this Part are in selected contracts and subcontracts within programs designated as major system acquisition programs in accordance with 32 CFR Part 213. Firm-fixed-price and firm-fixed-price-with-economic-price-adjustment con tracts are excluded. Application of the C/SCSC to major construction projects is also encouraged where appropriate.

§ 206.3 Objectives.

(a) To provide an adequate basis for responsible decision-making by both contractor management and DoD Components, contractors' internal management control systems must provide data which (1) indicate work progress, (2) properly relate cost, schedule and technical accomplishment, (3) are valid, timely and auditable, and (4) supply DoD managers with information at a practicable level of summarization.

(b) To bring to the attention of, and encourage, DoD contractors to accept and install management control systems and procedures which are most effective in meeting their requirements and controlling contract performance. DoD contractors also should be continuously alert to advances in management control systems which will improve their internal operations.

§ 206.4 Policy.

(a) It shall be the general policy to: (1) Require applications of the C/SCSC as stated in § 206.6 to programs that are within the scope of § 206.2, (2) require no changes in contractors' existing cost/schedule control systems except those necessary to meet the C/SCSC, and (3) require the contractor to provide to the Government performance data directly from the same system used for internal management.

(b) The policies and criteria contained herein will not be construed as requiring the use of specific systems or changes in accounting systems which will adversely affect: (1) The equitable distribution of costs to all contracts, or (2) compliance with the standards, rules, and regulations promulgated by the Cost Accounting Standards Board.

(c) Subcontracts within applicable programs, excluding those that are firm-fixed-price, may be selected for application of these criteria by mutual agreement between prime contractors and the contracting DoD Component, according to the criticality of the subcontract to the program. Coverage of certain critical subcontracts may be directed by the Department of Defense, subject to the changes article of the contracts. In those cases where a subcontractor is not required to comply with the criteria, the Cost/Schedule Status Report (C/SSR) approach to performance measurement set forth in 32 CFR 164 will normally be used. The limitations in 32 CFR Part 164 apply.

(d) The applicability of C/SCSC and provisions concerning the acceptability and use of contractor's cost/schedule control systems shall be (1) included in the Decision Coordinating Papers (DCP) leading to the decisions for full-scale development and production, (2) addressed in procurement plans, (3) set forth in Requests for Proposal (RFP), and (4) made a contractual requirement in appropriate procurements.

(1) *Reviews of Systems.* To ensure compliance with the Cost/Schedule Control Systems Criteria, contractors' systems will be reviewed during various phases of the contracting process.

(i) Where the C/SCSC are included as a requirement in the RFP, an Evaluation Review will be performed as an integral part of the source selection process.

(ii) After contract award, an in-plant Demonstration Review will be made to verify that the contractor is operating systems which meet the criteria.

(iii) Upon successful completion of the Demonstration Review, contractors will not be subjected to another Demonstration Review unless there are positive indications that the contractor's systems no longer operate so as to meet the criteria.

(iv) Subsequent contracts may require a review of shorter duration and less depth to ensure the appropriate and effective application of the accepted systems to the new contract.

(v) Detailed procedures relating to contractual application, interpretative guidance, interservice relationships, and conduct of systems reviews are contained in the Cost/Schedule Control Systems Criteria Joint Implementation Guide.[1]

---

[1] Copies available from Superintendent of Documents, U.S. Government Printing

Continued

(2) *Memorandum of Understanding.* After determination that a management system meets C/SCSC, a Memorandum of Understanding may be established between the Department of Defense and the contractor to apply to future contracts.

(i) The use of a Memorandum of Understanding contemplates the execution of a written instrument which references the C/SCSC and negotiated provisions which (A) reflect an understanding between the contractor and the DoD of the requirements of the DoD criteria, and (B) identify the specific system(s) which the contractor intends to use on applicable contracts with DoD Components.

(ii) The Memorandum of Understanding will include or make reference to a written description of the system(s) accepted in a Demonstration Review. The system description should be of sufficient detail to permit adequate surveillance by responsible parties. The use of a Memorandum of Understanding is preferred where a number of separate contracts between one or more DoD Component(s) and the contractor may be entered into during the term of the Memorandum of Understanding. It contemplates the delegation of authority to the DoD Component negotiating the Memorandum of Understanding with the contractor to make the agreement on behalf of all prospective DoD contracting components.

(iii) Action to develop a Memorandum of Understanding may be initiated by either the contractor or the DoD Component, but will usually be in connection with a contractual requirement. In a proposal, reference to a Memorandum of Understanding satisfies the C/SCSC requirement in RFP's and normally obviates the need for further Evaluation Review during source selection. Procedures for executing Memorandums of Understanding are included in the Cost/Schedule Control Systems Criteria Joint Implementation Guide.[1]

(3) *Surveillance.* Recurring evaluations of the effectiveness of the contractor's policies and procedures will be performed to ensure that the contractor's system continues to meet the C/SCSC and provides valid data consistent with the intent of this Instruction. Surveillance reviews will be based on selective tests of reported data and periodic evaluations of internal practices during the life of the contract. Guidance for surveillance is set forth in the C/SCSC Joint Surveillance Guide.[2]

§ 206.5 Responsibilities.

Pursuant to authority contained in DoD Directive 7000.1.[3]

(a) The Assistant Secretary of Defense (Comptroller) will establish policy guidance pertaining to the Cost/Schedule Control Systems Criteria and will monitor their implementation to ensure consistent application throughout the Department of Defense.

(b) The Secretaries of the Military Departments will issue appropriate instructions which promulgate the policies contained herein and which assign responsibilities for accomplishing the actions required to validate contractors' compliance with the C/SCSC.

(c) The Joint Logistics Commanders will develop and issue joint implementing instructions which outline the procedures to be used in applying, testing and monitoring the C/SCSC on applicable contracts and will ensure that adequate reviews of contractors' systems are performed. The joint implementing procedures and their revisions will be coordinated among all affected DoD Components and submitted to the Assistant Secretary of Defense (Comptroller) for review prior to publication.

(d) The Defense Contract Audit Agency and the appropriate Contract Administration Service office will participate in reviews of contractors' systems under their cognizance and will

---

Office, Washington, D.C. Stock Number 722-609/94.

[2] Copies available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Stock Number 241-382/5009.

[3] Filed as part of original. Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

perform required surveillance, collaborating with each other and with the procuring DoD Component in reviewing areas of joint interest.

§ 206.6 Cost/schedule control systems criteria.

(a) *General.* (1) Any system used by the contractor in planning and controlling the performance of the contract shall meet the criteria set forth in § 206.6(c). Nothing in these criteria is intended to affect the basis on which costs are reimbursed and progress payments are made, and nothing herein will be construed as requiring the use of any single system, or specific method of management control or evaluation of performance. The contractor's internal systems need not be changed, provided they satisfy these criteria.

(2) Any element in the evaluation of proposals will be the proposer's system for planning and controlling contract performance. The proposer will fully describe the system to be used. The prospective contractor's cost/schedule control system proposal will be evaluated to determine if it meets these criteria. The prospective contractor will agree to operate a compliant system throughout the period of contract performance if awarded the contract. The DoD will agree to rely on the contractor's compliant system and therefore will not impose a separate planning and control system.

(b) *Definitions*—(1) *Actual cost of work performed (ACWP).* The costs actually incurred and recorded in accomplishing the work performed within a given time period.

(2) *Actual direct costs.* Those costs identified specifically with a contract, based upon the contractor's cost identification and accumulation system as accepted by the cognizant DCAA representatives. (See Direct Costs.)

(3) *Allocated budget.* (See Total Allocated Budget.)

(4) *Applied direct costs.* The amounts recognized in the time period associated with the consumption of labor, material, and other direct resources, without regard to the date of commitment or the date of payment. These amounts are to be charged to work-in-process in the time period that any one of the following takes place:

(i) When labor, material and other direct resources are actually consumed, or

(ii) When material resources are withdrawn from inventory for use, or

(iii) When material resources are received that are uniquely identified to the contract and scheduled for use within 60 days, or

(iv) When major components or assemblies are received on a line flow basis that are specifically and uniquely identified to a single serially numbered end item.

(5) *Apportioned effort.* Effort that by itself is not readily divisible into short-span work packages but which is related in direct proportion to measured effort.

(6) *Authorized work.* That effort which has been definitized and is on contract, plus that for which definitized contract costs have not been agreed to but for which written authorization has been received.

(7) *Baseline.* (See Performance Measurement Baseline.)

(8) *Budgeted cost for work performed (BCWP).* The sum of the budgets for completed work packages and completed portions of open work packages, plus the appropriate portion of the budgets for level of effort and apportioned effort.

(9) *Budgeted cost for work scheduled (BCWS).* The sum of budgets for all work packages, planning packages, etc., scheduled to be accomplished (including in-process work packages), plus the amount of level of effort and apportioned effort scheduled to be accomplished within a given time period.

(10) *Budgets for work packages.* (See Work Package Budgets.)

(11) *Contract budget base.* The negotiated contract cost plus the estimated cost of authorized unpriced work.

(12) *Contractor.* An entity in private industry which enters into contracts with the Government. In this instruction, the work may also apply to Government-owned, Government-operated activities which perform work on major defense programs.

(13) *Cost account.* A management control point at which actual costs can be accumulated and compared to

budgeted costs for work performed. A cost account is a natural control point for cost/schedule planning and control, since it represents the work assigned to one responsible organizational element on one contract work breakdown structure (CWBS) element.

(14) *Direct costs.* Any costs which can be identified specifically with a particular final cost objective. This term is explained in ASPR 15-202.

(15) *Estimated cost at completion or estimate at completion (EAC).* Actual direct costs, plus indirect costs allocable to the contract, plus the estimate of costs (direct and indirect) for authorized work remaining.

(16) *Indirect costs.* Costs, which because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. This term is further defined in ASPR 3-701.3 and ASPR 15-203.

(17) *Initial budget.* (See Original Budget.)

(18) *Internal replanning.* Replanning actions performed by the contractor for remaining effort within the recognized total allocated budget.

(19) *Level of effort (LOE).* Effort of a general or supportive nature which does not produce definite end products or results.

(20) *Management reserve.* (Synonymous with Management Reserve Budget). An amount of the total allocated budget withheld for management control purposes rather than designated for the accomplishment of a specific task or set of tasks. It is not a part of the Performance Measurement Baseline.

(21) *Negotiated contract cost.* The estimated cost negotiated in a cost-plus-fixed-fee contract, or the negotiated contract target cost in either a fixed-price-incentive contract or a cost-plus-incentive-fee contract.

(22) *Original budget.* The budget established at, or near, the time the contract was signed, based on the negotiated contract cost.

(23) *Overhead.* (See Indirect Costs.)

(24) *Performance measurement baseline.* The time-phased budget plan against which contract performance is measured. It is formed by the budgets assigned to scheduled cost accounts and the applicable indirect budgets. For future effort, not planned to the cost account level, the performance measurement baseline also includes budgets assigned to higher level CWBS elements, and undistributed budgets. It equals the total allocated budget less management reserve.

(25) *Performing organization.* A defined unit within the contractor's organization structure, which applies the resources to perform the work.

(26) *Planning package.* A logical aggregation of work within a cost account, normally the far term effort, that can be identified and budgeted in early baseline planning, but is not yet defined into work packages.

(27) *Procuring activity.* The subordinate command in which the Procuring Contracting Office (PCO) is located. It may include the program office, related functional support offices, and procurement offices. Examples of procuring activities are AFSC/ESD, AFLC/OC-ALC, DARCOM/MIRADCOM, and NMC/NAVAIRSYSCOM.

(28) *Replanning.* (See Internal Replanning.)

(29) *Reprograming.* Replanning of the effort remaining in the contract, resulting in a new budget allocation which exceeds the contract budget base.

(30) *Responsible organization.* A defined unit within the contractor's organization structure which is assigned responsibility for accomplishing specific tasks.

(31) *Significant variances.* Those differences between planned and actual performance which require further review, analysis, or action. Appropriate thresholds should be established as to the magnitude of variances which will require variance analysis.

(32) *Total allocated budget.* The sum of all budgets allocated to the contract. Total allocated budget consists of the performance measurement baseline and all management reserve. The total allocated budget will reconcile directly to the contract budget base. Any differences will be documented as to quantity and cause.

(33) *Undistributed budget.* Budget applicable to contract effort which has not yet been identified to CWBS ele-

ments at or below the lowest level of reporting to the Government.

(34) *Variances.* (See Significant Variances.)

(35) *Work breakdown structure.* A product-oriented family tree division of hardware, software, services, and other work tasks which organizes, defines, and graphically displays the product to be produced, as well as the work to be accomplished to achieve the specified product.

(i) *Project summary work breakdown structure.* A summary WBS tailored to a specific defense materiel item by selecting applicable elements from one or more summary WBS's or by adding equivalent elements unique to the project (MIL-STD-881A).

(ii) *Contract work breakdown structure (CWBS).* The complete WBS for a contract, developed and used by a contractor within the guidelines of MIL-STD-881A, and according to the contract work statement.

(36) *Work package budgets.* Resources which are formally assigned by the contractor to accomplish a work package, expressed in dollars, hours, standards, or other definitive units.

(37) *Work packages.* Detailed short-span jobs, or material items, identified by the contractor for accomplishing work required to complete the contract. A work package has the following characteristics:

(i) It represents units of work at levels where work is performed.

(ii) It is clearly distinguishable from all other work packages.

(iii) It is assignable to a single organizational element.

(iv) It has scheduled start and completion dates and, as applicable, interim milestones, all of which are representative of physical accomplishment.

(v) It has a budget or assigned value expressed in terms of dollars, man-hours, or other measurable units.

(vi) Its duration is limited to a relatively short span of time or it is subdivided by discrete value-milestones to facilitate the objective measurement of work performed.

(vii) It is integrated with detailed engineering, manufacturing, or other schedules.

(c) *Criteria.* The contractors' management control systems will include policies, procedures, and methods which are designed to ensure that they will accomplish the following:

(1) *Organization.* (i) Define all authorized work and related resources to meet the requirements of the contract, using the framework of the CWBS.

(ii) Identify the internal organizational elements and the major subcontractors responsible for accomplishing the authorized work.

(iii) Provide for the integration of the contractor's planning, scheduling, budgeting, work authorization and cost accumulation systems with each other, the CWBS, and the organizational structure.

(iv) Identify the managerial positions responsible for controlling overhead (indirect costs).

(v) Provide for integration of the CWBS with the contractor's functional organizational structure in a manner that permits cost and schedule performance measurement for CWBS and organizational elements.

(2) *Planning and budgeting.* (i) Schedule the authorized work in a manner which describes the sequence of work and identifies the significant task interdependencies required to meet the development, production and delivery requirements of the contract.

(ii) Identify physical products, milestones, technical performance goals, or other indicators that will be used to measure output.

(iii) Establish and maintain a time-phased budget baseline at the cost account level against which contract performance can be measured. Initial budgets established for this purpose will be based on the negotiated target cost. Any other amount used for performance measurement purposes must be formally recognized by both the contractor and the Government.

(iv) Establish budgets for all authorized work with separate identification of cost elements (labor, material, etc.).

(v) To the extent the authorized work can be identified in discrete, short-span work packages, establish budgets for this work in terms of dollars, hours, or other measurable units. Where the entire cost account cannot be subdivided into detailed work packages, identify the far term effort in larger planning packages for budget and scheduling purposes.

(vi) Provide that the sum of all work package budgets, plus planning package budgets within a cost account equals the cost account budget.

(vii) Identify relationships of budgets or standards in underlying work authorization systems to budgets for work packages.

(viii) Identify and control level of effort activity by time-phased budgets established for this purpose. Only that effort which cannot be identified as discrete, short-span work packages or as apportioned effort will be classed as level of effort.

(ix) Establish overhead budgets for the total costs of each significant organizational component whose expenses will become indirect costs. Reflect in the contract budgets at the appropriate level the amounts in overhead pools that will be allocated to the contract as indirect costs.

(x) Identify management reserves and undistributed budget.

(xi) Provide that the contract target cost plus the estimated cost of authorized but unpriced work is reconciled with the sum of all internal contract budgets and management reserves.

(3) *Accounting*. (i) Record direct costs on an applied or other acceptable basis in a formal system that is controled by the general books of account.

(ii) Summarize direct costs from cost accounts into the WBS without allocation of a single cost account to two or more WBS elements.

(iii) Summarize direct costs from the cost accounts into the contractor's functional organizational elements without allocation of a single cost account to two or more organizational elements.

(iv) Record all indirect costs which will be allocated to the contract.

(v) Identify the bases for allocating the cost of apportioned effort.

(vi) Identify unit costs, equivalent unit costs, or lot costs as applicable.

(vii) The contractor's material accounting system will provide for:

(A) Accurate cost accumulation and assignment of costs to cost accounts in a manner consistent with the budgets using recognized, acceptable costing techniques.

(B) Determination of price variances by comparing planned versus actual commitments.

(C) Cost performance measurement at the point in time most suitable for the category of material involved, but no earlier than the time of actual receipt of material.

(D) Determination of cost variances attributable to the excess usage of material.

(E) Determination of unit or lot costs when applicable.

(F) Full accountability for all material purchased for the contract, including the residual inventory.

(4) *Analysis*. (i) Identify at the cost account level on a monthly basis using data from, or reconcilable with, the accounting system:

(A) Budgeted cost for work scheduled and budgeted cost for work performed.

(B) Budgeted cost for work performed and applied (actual where appropriate) direct costs for the same work.

(C) Variances resulting from the above comparisons classified in terms of labor, material, or other appropriate elements together with the reasons for significant variances.

(ii) Identify on a monthly basis, in the detail needed by management for effective control, budgeted indirect costs, actual indirect costs, and variances along with the reasons.

(iii) Summarize the data elements and associated variances listed in (i) and (ii) above through the contractor organization and WBS to the reporting level specified in the contract.

(iv) Identify significant differences on a monthly basis between planned and actual schedule accomplishment and the reasons.

(v) Identify managerial actions taken as a result of criteria paragraphs (i) through (iv) of this section.

(vi) Based on performance to date and on estimates of future conditions, develop revised estimates of cost at completion for WBS elements identified in the contract and compare these with the contract budget base and the latest statement of funds requirements reported to the Government.

(5) *Revisions and access to data.* (i) Incorporate contractual changes in a timely manner recording the effects of such changes in budgets and schedules. In the directed effort prior to negotiation of a change, base such revisions on the amount estimated and budgeted to the functional organizations.

(ii) Reconcile original budgets for those elements of the work breakdown structure identified as priced line items in the contract, and for those elements at the lowest level of the DoD Project Summary WBS, with current performance measurement budgets in terms of (A) changes to the authorized work and (B) internal replanning in the detail needed by management for effective control.

(iii) Prohibit retroactive changes to records pertaining to work performed that will change previously reported amounts for direct costs, indirect costs, or budgets, except for correction of errors and routine accounting adjustments.

(iv) Prevent revisions to the contract budget base § 206.6(b)(11) except for Government directed changes to contractual effort.

(v) Document, internally, changes to the performance measurement baseline (§ 206.3(b)(24)) and, on a timely basis, notify the procuring activity through prescribed procedures.

(vi) Provide the contracting officer and his duly authorized representatives access to all of the foregoing information and supporting documents.

PART 207—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS (ADCP)

Sec.

207.1 Purpose.
207.2 Applicability and scope.
207.3 Definitions.
207.4 Objectives.
207.5 Policy.
207.6 Responsibilities.

AUTHORITY: Pub. L. 93-400, sec. 6.

SOURCE: 43 FR 57874, Dec. 11, 1978, unless otherwise noted.

§ 207.1 Purpose.

This part establishes the policies and responsibilities for the acquisition and distribution of commercial products (ADCP) within the Department of Defense.

§ 207.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components").

(b) The policies for ADCP expressed in this part apply to requirements for all end items, weapons, equipment, components or material for which commercial products are used or can be used, including principal and secondary items.

§ 207.3 Definitions.

(a) *Commercial, off-the-shelf (OTS), products* (also referred to as "commercial products"). Products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices.

(b) *Established commercial market acceptability.* Commercial market acceptability is an evaluation of the product offered, performed for the purpose of determining a prospective contractor's ability to provide a commercial product that will conform to the Government's need. To be market acceptable, a product must be marketed in substantial quantities to the general public. To be substantial, sales to the general public must predominate over sales to the Government. If the commercial products were previously defined by a Government specification, offers of products which were acceptable under the Government specification may be considered under solicitations requiring a product to have established commercial market acceptability.

(c) *Principal item.* End items and replacement assemblies of such importance that the Military Departments require centralized individual item management throughout the supply system, to include depot level, base level, and items in the hands of the using units. Specifically included are items, where in the judgment of the DoD Component, there is a need for centralized inventory control, computation of requirements, acquisition, direction of distribution, and availability of the principal assets owned by that DoD Component.

(d) *Secondary items.* End items, replacement assemblies, parts and consumables, other than principal items.

§ 207.4 Objectives.

The objectives of this part are to:

(a) Acquire commercial, off-the-shelf, products when such products will adequately serve the Government's requirements provided such products have an established market acceptability.

(b) Encourage, recognize the evaluate technological innovations in commercial items that are applicable to Defense needs.

(c) Optimize research, engineering, acquisition and support costs and enhance the opportunity for life cycle cost saving.

(d) Eliminate unnecessary Government specifications for commercial products and/or adopt non-Government specifications and standards where feasible. When Government specifications are used, tailor their application, where possible, to reflect the best commercial practices in form, fit, function or performance.

(e) Implement acquisition procedures designed to optimize the Government's advantage while minimizing the administrative burden to the contractor and Government.

(f) Validate feasible commercial item logistics support alternatives ensuring the least costly, acceptable life cycle support plan is chosen.

(g) Foster competitive industrial sources for acquisition, distribution and support of Government requirements for items managed by the Department of Defense.

§ 207.5 Policy.

In accordance with the Office of Federal Procurement Policy (OFPP) Memorandum, "Procurement and Supply of Commercial Products," May 24, 1976, as implemented by OFPP Memoranda, "Incremental Implementation of Policy on Procurement and Supply of Commercial Products—Planning and Analysis Phase," December 6, 1976, and "Implementation of Policy on Acquisition and Distribution of Commercial Products (ADCP)," December 27, 1977, DoD Components shall:

(a) Purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirement, provided such products have an established commercial market acceptability, and

(b) Use commercial distribution channels in supplying commercial products to users when it is economically advantageous to do so and the impact on military readiness is acceptable.

§ 207.6 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E), or designee, is responsible for the implementation of the acquisition policy aspects of ADCP.

(b) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD (MRA&L)) is responsible for implementing the logistics policy for ADCP.

(c) DoD Components will:

(1) Review applicable internal directives, regulations, and instructions, and revise them as necessary to comply with this Directive.

(2) Determine and designate those commercial off-the-shelf, principal and secondary items which may be acquired and/or supported under the policy contained in § 207.5.

PART 208—FEDERAL RADIONAVIGATION PLAN

Sec.
208.1 Purpose.
208.2 Applicability.
208.3 Policy.
208.4 Responsibilities.

AUTHORITY: 10 U.S.C. 133.

SOURCE: 45 FR 45580, July 7, 1980, unless otherwise noted.

§ 208.1 Purpose.

Under Part 350 and DoD/DoT Interagency Agreement, "Coordination of Radionavigation Planning," April 17, 1979, this part authorizes publication of DoD 4650.4-P, the "Federal Radionavigation Plan," as a DoD issuance on responsibilities, system characteristics, requirements and research, engineering and development, and other guidance for radionavigation systems and services.

§ 208.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Unified and Specified Commands, and the Defense Agencies hereafter referred to as "DoD Components."

§ 208.3 Policy.

The Federal Radionavigation Plan (FRP) shall describe the federal interagency approach to the planning, implementation, and operation of common-user radionavigation systems. The FRP will be updated annually by the Positioning/Navigation (POS/NAV) Executive Committee in conjunction with the Department of Transportation Navigation Council. The FRP reflects the latest available executive and legislative budget decisions and the information contained in the Joint Chiefs of Staff Master Navigation Plan.

§ 208.4 Responsibilities.

The *Assistant Secretary of Defense (Communications, Command, Control, and Intelligence)*, after appropriate coordination with the Deputy Under Secretary of Defense for Policy Review, other interested DoD Components, and federal agencies shall issue DoD Plan 4650.4-P, in accordance with DoD Directive 5025.1,[1] "Department of Defense Directives System," November 18, 1977.

PART 209—METRIC SYSTEM OF MEASUREMENT

Sec.
209.1 Reissuance and purpose.
209.2 Applicability.
209.3 Background.
209.4 Policy.
209.5 Objectives.
209.6 Responsibilities.

AUTHORITY: 15 U.S.C. 205a-k (Pub. L. 94-168).

SOURCE: 45 FR 17574, Mar. 19, 1980, unless otherwise noted.

§ 209.1 Reissuance and purpose.

This part is reissued to reflect organizational responsibilities for the implementation and management of the metrication system of measurement within the Department of Defense, and to establish the Metrication Steering Group.

§ 209.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 209.3 Background.

(a) The Metric Conversion Act of 1975, Title 15 U.S.C. section 205a-k (Pub. L. 94-168) establishes a national policy of coordinating the use of the metric system in the United States. To comply with that policy, the Department of Defense must establish guidelines and procedures to ensure that conversion from the U.S. customary system of weights and measures (inch-pound) to the metric system shall be accomplished with minimum cost and disruption of operations.

(b) Use of the metric system shall promote interchangeability and interoperability of equipment and materiel with our allies, facilitate joint military production programs, and simplify supply operations.

(c) DoD Components shall keep pace with industry by using metric items when commercially available and economically and technically practicable.

§ 209.4 Policy.

(a) It is the policy of the Department of Defense to consider the use of the metric system in all of its activities, consistent with operational, economical, technical, and safety requirements.

(b) The metric system shall be used in all new designs, unless such use is not in the best interest of the Department of Defense. In the latter instance, justification shall be documented. Adoption of the metric system shall also be considered in the acquisition of supplies and services. In general, DoD Components shall adopt the metric system in:

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

(1) Developing materiel to be used jointly with the North Atlantic Treaty Organization (NATO) and other allied nations.

(2) Developing military materiel that has potential for significant foreign sales or multinational joint acquisition programs.

(3) Areas where industry has made significant progress in the design and production of metric products.

(4) Areas where defense-industry preparedness or defense production readiness may be enhanced.

(5) Areas that offer an economical, operational, or other advantage, or where no disadvantage is incurred.

§ 209.5 Objectives.

(a) Physical and operational interfaces between metric items and inch-pound items shall be designed to ensure that interchangeability and interoperability shall not be adversely affected.

(b) Existing designs dimensioned in inch-pound units shall be converted to metric units only if determined to be necessary or advantageous. Unnecessary retrofit of existing systems with new metric components shall be avoided when both the metric and inch-pound components are interchangeable and interoperable. Normally, the measurement units in which a system is originally designed shall be retained for the life of the system.

(c) During the metric transition phase, use of hybrid metric and inch-pound designs may be necessary and will be acceptable. Materiel components, parts, subassemblies, and semifabricated materials that are of commercial design shall be specified in metric units when economically available and technically adequate, or when it is otherwise specifically determined to be in the best interest of the Department of Defense. Bulk materials shall be specified and accepted in metric units when expediency and economy dictates.

(d) Defense Systems Acquisition Review Council (DSARC) reviews and associated Decision Coordinating Papers (DoD Directive 5000.2[1] "Major System Acquisition Process," January 18, 1977) shall address the use of metric units of measurement or reasons for their nonuse.

(e) Technical reports, studies, and position papers (except those pertaining to items dimensioned in inch-pound units) shall include metric units of measurement in addition to or in place of inch-pound units. With respect to existing contracts, this requirement applies only if such documentation can be obtained without an increase in contract costs.

(f) Programing and budgeting actions shall include resources required to support the DoD effort in converting to the use of metric units. Use of the metric system shall be identified, justified, and planned so that costs can be included in the budget cycle on an orderly basis.

(g) The Department of Defense shall use the metric system of the International System of Units (SI) described by the American Society for Testing and Materials, E 380, "Standard for metric Practice, DoD Index of Specifications and Standards."

(h) To the extent that there is DoD interest, representatives shall participate in the development of national and international standards using the metric system. NATO and other international metric standards shall be used to the maximum practical extent. However, if a U.S. standard is established with greater definition and restriction than the international standard, the U.S. standard shall be used.

(i) Emphasis shall be placed on converting or developing specifications, standards, and other general-purpose technical data to keep pace with overall metric conversion activity. When a military item has no commercial counterpart, the developing agency shall assume a leadership role in developing the applicable metric document when the need arises.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

(j) When purchasing new shop and laboratory equipment, DoD Components are encouraged to specify features that will allow direct measurement of metric units or both metric and inch-pound units. Use of conversion kits is also encouraged.

(k) Training in metric practices and usage shall be provided to personnel whose duties require such knowledge.

(l) Use of dual dimensions (such as both metric and inch-pound dimensions on drawings) shall be avoided, unless it is determined in specific instances that such usage is beneficial. The use of tables on documents to translate dimensions from one system of measurement to the other is acceptable.

§ 209.6 Reponsibilities.

(a) The *Under Secretary of Defense for Research and Engineering*, or designee, shall:

(1) Provide direction and guidance in the application and use of the metric system of measurement.

(2) Establish the DoD Metrication Steering Group to plan and coordinate the Department of Defense's conversion to the metric system, and to advise DoD Components on matters relating to metrication.

(b) The *Heads of DoD Components* shall:

(1) Appoint a person or establish an office to coordinate metric activities.

(2) Designate a primary and alternate person to represent the DoD Component on the DoD Metrication Steering Group.

(3) The Defense Logistics Agency shall provide the Executive Secretariat to the DoD Metrication Steering Group.

PART 210—ENFORCEMENT OF STATE TRAFFIC LAWS ON DOD INSTALLATIONS

Sec.

210.1 Purpose.
210.2 Applicability and scope.
210.3 Policy.
210.4 Responsibilities.

AUTHORITY: 63 Stat. 377, as amended, 18 U.S.C. 13, 40 U.S.C. 318a through d., 40 U.S.C. 612.

SOURCE: 46 FR 58306, Dec. 1, 1981, unless otherwise noted.

§ 210.1 Purpose.

This part establishes policies pursuant to the requirements of DoD Directive 6055.4,[1] "Department of Defense Traffic Safety Program," November 7, 1978, and to authority delegated to the Secretary of Defense under Enclosure 1 for the enforcement, on DoD military installations, of those state vehicular and pedestrian traffic laws that cannot be assimilated under U.S.C., Title 18, section 13.

§ 210.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

(b) The provisions encompass all persons who operate or control a motor vehicle or otherwise use the streets of a military installation over which the United States exercises exclusive or concurrent legislative jurisdiction.

(c) The provisions govern only vehicular and traffic offenses or infractions that cannot be assimilated under U.S.C. Title 18, section 13, thereby precluding application of state laws to traffic offenses committed on military installations.

§ 210.3 Policy.

(a) It is the policy of the Department of Defense that an effective, comprehensive traffic safety program be established and maintained at all military installations as prescribed in DoD Directive 6055.4.[1]

(b) State vehicular and pedestrian traffic laws that are now or may hereafter be in effect shall be expressly adopted and made applicable on military installations to the extent provided by this part. All persons on a military installation shall comply with the vehicular and pedestrian traffic laws of the state in which the installation is located.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

(c) A person found guilty of violating, on a military installation, any state vehicular or pedestrian traffic law made applicable to the installation under the provisions of this part is subject to a fine of not more than $50 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c).

(d) This part does not limit the application of any Federal law or regulation or, under 18 U.S.C. 13 any state law made applicable to offenses committed on military installations.

(e) A copy of this part shall be posted in an appropriate place on the DoD installation concerned.

§ 210.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) shall modify this part as appropriate.

(b) Secretaries of the Military Departments shall comply with this part.

PART 211—DoD FOREIGN TAX RELIEF PROGRAM

Sec.

211.1 Reissuance and purpose.
211.2 Applicability and scope.
211.3 Definitions.
211.4 Policy.
211.5 Responsibilities.
211.6 Country tax law studies.
211.7 Information requirements.

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 133.

SOURCE: 44 FR 50598, Aug. 29, 1979, unless otherwise noted.

§ 211.1 Reissuance and purpose.

This part (a) is reissued without substantive change, to correct superseded references, and (b) defines the tax relief policy of the Department of Defense, designates the organizational element which has continuing responsibility for the overall direction of the DoD Foreign Tax Relief Program, delineates the responsibilities of other organizational elements to implement and monitor the program, and requires the preparation and maintenance of specified foreign country tax law studies in order to facilitate the institution of statistical reporting procedures.

§ 211.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Command, and the Defense Agencies (hereafter referred to as "DoD Components").

(b) The policy set forth in this part applies to:

(1) Military functions expenditures by the Department of Defense, and

(2) Expenditures by nonappropriated fund activities of the Department of Defense that are subject to taxes imposed by:

(i) Foreign countries in which U.S. military forces are regularly stationed (other than attache and other military personnel assigned to a U.S. diplomatic mission); and

(ii) Any other foreign country in which all or most U.S. defense activities, in a collective sense, are conducted in the interest of the common defense or otherwise significantly improve the military security of that country.

(c) The policy set forth in this part also applies to Military Assistance Program (MAP) expenditures in all countries.

§ 211.3 Definitions.

(a) Regardless of how a charge is denominated in foreign law or regulation, the words "tax" and "taxes" include all direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local or intermediate level of a foreign country other than charges for services rendered or for other consideration received.

(b) For example, taxes include but are not limited to purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax, license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

(c) The word "relief" includes any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

§ 211.4 Policy.

It is the policy of the Department of Defense to secure, to the maximum extent practicable, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including MAP appropriations) or under the control of its nonappropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a *de minimis* matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief obtained, tax relief shall be considered impracticable.

§ 211.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall:

(1) Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

(2) Resolve any significant issues relating to the program.

(3) Designate those countries that come within § 211.2(b)(2)(ii) of this part.

(4) Direct the preparation of country tax law studies for countries not within the scope of § 211.2(b) of this part.

(5) Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief established by the Department of State.

(b) The *Assistant Secretary of Defense (International Security Affairs)* shall monitor the negotiation and conclusion of international agreements subject to the Secretary's approval authority under DoD Instruction 2050.1 Delegated Approval Authority to Negotiate and Conclude International Agreements, July 6, 1977,[1] to ensure that such agreements are compatible with the policy set forth in this part and any implementing guidance concerning that policy issued by the General Counsel of the Department of Defense.

(c) The *Chairman, Defense Acquisition Regulatory Council,* shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of the Defense Acquisition Regulatory System (or regulation, directive, circular, or other publication within the scope of 32 CFR Part 160) that pertains to the implementation of the DoD Foreign Tax Relief Program.

(d) The *Assistant Secretary of Defense (Comptroller)* shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

(e) The *Secretary of each of the Military Departments* and the *Director of each of the Defense Agencies* shall issue instructions or regulations that charge a single office within the respective Military Department of Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Department or Agency. Such instructions or regulations shall delegate to the Cognizant Office authority commensurate with its responsibility.

(f) *Commanders of Unified Commands,* as appropriate, shall promulgate management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective area commands.

(g) For each foreign country that comes within the scope of subsection B.2 of this directive, a single Military Commander shall be designated by the Commander of the Unified Command.

---

[1] See footnote 1 to § 209.5(d).

The designated Military Commander shall be the same designated under the procedures in § 151.3(c) of 32 CFR Part 151. The designated Military Commander shall:

(1) Make and maintain a current country tax law study in accordance with § 211.6 of this part.

(2) Be the single point of contact for U.S. contracting officers and activities for the investigation and resolution of specific matters that relate to the foreign tax relief program within the country for which the Military Commander is designated and for the forwarding of major problems affecting that program through proper channels to the General Counsel of the Department of Defense.

(3) Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

§ 211.6 Country tax law studies.

(a) The taxes covered by each country tax law study shall be limited to those which in the absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures, even as a *de minimis* matter. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Unified Command insofar as practicable and designed to facilitate statistical reporting procedures. The studies shall be prepared and maintained with a view to the practical utilization of the studies by U.S. contracting officers and activities for purposes of making reliable estimates of the total amount of taxes applicable to any particular contract and the amount thereof for which tax relief is available.

(b) Each country tax law study shall consist of the following:

(1) A general survey of all applicable taxes, together with translations, as appropriate, of the salient features of the law or regulations imposing those taxes.

(2) For each applicable tax, a summary statement containing: Its name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for the payment of the tax to the taxing authority under the law of the country); its description (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services, or construction) in the event the tax is applicable to only one or several of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as United States, host country, or third country; any applicable exemptions or deductions of significance; and the method of collection of the tax.

(3) The basis upon which it is concluded that each applicable tax, in absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

(4) The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or under the tax law or other regulation of the country; the procedures which may be used to obtain any such relief; the requirement, if any, for the issuance of a tax exemption certificate by the military procuring agency or by an agency of the country to secure an exemption; the entitlement, if any, of the taxpayer to interest on any tax refund made by the host country; the credits, if any, that may be available against any other taxes otherwise payable by the taxpayer resulting from the payment of the tax under analysis; the approximate amount of the tax that should be involved in a particular case, if such can be estimated, taking into account the costs of filing a claim for refund by a contractor to warrant filing such a claim; and a brief narration of any significant problems which

have occurred in attempting to obtain relief in particular cases.

(5) A conclusion with regard to the adequacy of current tax relief measures; and such recommendations as may be appropriate for more efficient implementation of the policy set forth in this part.

(c) Appended to each country tax law study shall be a verbatim quotation of all provisions relating to tax relief afforded by the country that are contained in international agreements in force.

(d) One copy of each country tax law study shall be forwarded to the General Counsel of the Department of Defense and to each of the Cognizant Offices of the Military Departments and Defense Agencies within 30 days after its approval by the designated Military Commander. The information contained in the studies shall be disseminated by the Cognizant Offices to U.S. contracting officers and activities when required.

(e) Country tax law studies shall be subject to continuing review. When there is a significant change in country tax laws, regulations, tax relief procedures, or in pertinent international agreements in force, the corresponding revision shall be promptly forwarded by the designated Military Commander to each of the offices referred to in § 211.6(d).

§ 211.7 Information Requirements.

(a) The reporting requirement contained in §211.6 relating to the submission of country tax law studies and revisions thereof is assigned Report Control Symbol DDSD (AR) 1036.

(b) Each January a summary of significant activities during the preceding year in implementation of the DoD Foreign Tax Relief Program shall be furnished by the Heads of Cognizant Offices to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Cognizant Office to discharge its responsibility for supervising and monitoring the implementation of the foreign tax relief program within its Military Department or Defense Agency, and for disseminating the information contained in country tax law studies to U.S. contracting officers and activities. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC (A) 1198.

(c) Each January a summary of significant activities during the preceding year of the administration of the foreign tax relief program shall be furnished by Commanders of the Unified Commands to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Unified Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC (A) 1199.

PART 212—PRIVATE ORGANIZATIONS ON DoD INSTALLATIONS

Sec.
212.1 Purpose.
212.2 Applicability and scope.
212.3 Exclusions.
212.4 Policy.
212.5 Responsibilities.
212.6 Logistical support and services.
212.7 Definitions.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 43 FR 58084, Dec. 12, 1978, unless otherwise noted.

EDITORIAL NOTE: Part 212 was inadvertently removed at 46 FR 37635, July 22, 1981, and reinstated at 46 FR 43965, Sept. 2, 1981.

§ 212.1 Purpose.

This part states DoD policy regarding Private Organizations on DoD Installations; defines and classifies private organizations located on DoD installations; and provides policy guidance for their authorization and operation.

§ 212.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) Its provisions cover private organizations authorized to operate on DoD installations and not otherwise excluded in § 212.3.

(c) Provisions of this part do not apply to nonappropriated fund instrumentalities and other officially recognized Federal Government fund entities.

(d) Policy guidance provided in this part is not intended to supplant or abrogate any specific agreements between the DoD Components and federally sanctioned or affiliated types of private organizations.

§ 212.3 Exclusions.

(a) For the purpose of this part, the following Type 1 private organizations are exempt from the provisions of this part since they are governed by specific policies and procedures contained in applicable DoD issuances referenced in the text. These include:

(1) Credit Unions
(2) Banking Offices
(3) American National Red Cross
(4) United Service Organizations
(5) United Seamen's Service
(6) Labor organizations subject to Executive Order 11491, as amended, and
(7) Associations of DoD supervisors and management officials.

(b) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized as Type 3 independent private organizations because of the limited scope of their activities, membership, or funds. Examples are office coffee funds, flower funds, and similar small informal activities and funds. DoD Components may establish the basis upon which such informal activities and funds may operate.

(c) Contractor and subcontractor organizations and funds on DoD installations are excluded.

§ 212.4 Policy.

(a) Private organizations are *not* nonappropriated fund instrumentalities nor is there an official relationship between their activities and those of DoD personnel who are members and/or participants. They are not held to be an integral part of the military organization, due to the nature of the functions which they perform and the particular characteristics of these organizations which provide for limited Government supervision, as opposed to the extensive supervision exercised over nonappropriated fund instrumentalities. Private organizations are not entitled to sovereign immunities and privileges accorded to nonappropriated fund instrumentalities. Their operation is of interest and concern to the Department of Defense because of their:

(1) Location on DoD installations;

(2) Relationships with elements of both the Federal and private sectors;

(3) Activities in support of certain recognized programs being conducted for the benefit of members of the DoD family; and

(4) Responsibilities as employers of U.S. citizens and other personnel.

(b) Specific policy applicable to all types of private organizations:

(1) A private organization normally will not utilize in its title or letterhead (i) the name or seal of the Department of Defense or the acronym "DoD;" (ii) the name, abbreviation, or seal of any Military Department or Military Service; or (iii) the seal, insignia, or other identifying device of the local installation. However, Heads of DoD Components may authorize exceptions if clarity of identification is necessary, provided official DoD sponsorship or endorsement is neither stated nor implied.

(2) Activities of private organizations will not in any way prejudice or discredit DoD Components or other agencies of the Federal Government.

(3) A private organization will not engage in activities which compete with those of any nonappropriated fund instrumentality on a DoD installation.

(4) Discrimination with regard to race, color, marital status, age, religion, national origin, lawful political affiliation, labor organization membership, physical handicap, or sex, will not be permitted in employment practices 32 CFR Part 191. Applicable laws with respect to labor standards for employment will be observed.

(5) Membership discrimination based on race, color, national origin or sex will not be permitted. This will not prohibit, however, the establishment of cultural or ethnic private organizations, providing membership is not restricted or discriminatory on the above basis.

(6) Neither appropriated fund activities nor nonappropriated fund instrumentalities shall assert any claim to the assets or incur or assume any obligation of any private organization except as may possibly arise out of contractual relationships. Notwithstanding the foregoing, property abandoned by a private organization upon or after its disestablishment, or donated by it to the installation, may be acquired by the DoD installation under the terms of existing DoD policy on these matters and consistent with the laws applicable to that installation.

(7) Adequate insurance, if appropriate, will be secured in order to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf. Since there is no direct, vested interest of the Federal Government or any of its instrumentalities in the assets of a private organization, the direct protection of organizational assets, such as through fidelity or fire insurance, is the responsibility of each private organization's membership.

(8) Guidance on sources of income to private organizations will be as follows:

(i) Except for minimal logistical support authorized in accordance with § 212.6 and the sources of income and support authorized those private organizations referenced in the text of this part, private organizations will be generally self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There will be no direct financial assistance to a private organization from a nonappropriated fund instrumentality in the form of contributions, dividends, or other donations of monies or other assets.

(ii) Private organizations will not engage in resale activities except through (A) thrift shop sales of used clothing and used merchandise; (B) museum shop sales of items related to museum activities; or (C) occasional sales for fund-raising purposes, such as raffles, dances, or carnivals, as approved by Heads of DoD Components or their designees.

(*1*) Only that merchandise which is listed in DoD Directive 1330.9[1] will be offered during such sales within the continental United States (CONUS), and in no case should sales at any DoD installation be on a frequent or continuing basis.

(*2*) Heads of DoD Components, or their designees, may approve exceptions to the above restrictions, providing (*i*) military exchanges or other nonappropriated fund instrumentalities cannot be responsive to the particular resale requirement; and (*ii*) merchandise is sold only to members and is directly related to the purpose and function of the private organization.

(9) All laws governing comparable private sector activities will be examined and the need for compliance by the private organization therewith determined.

(c) In addition to the foregoing policy, affiliated and independent private organizations will comply with the following:

(1) The nature, function and objectives of the local private organization will be delineated in writing and submitted for the approval of the head of the DoD installation. These written provisions will be in the form of a duly prepared constitution, by-laws, charter, articles of agreement, or other authorization documents acceptable to the membership. Documentation will also provide for:

(i) Establishment of local membership eligibility, which will be primarily for members of the DoD family.

(ii) Designation of management responsibilities, to include the accountability for assets, satisfaction of liabilities, disposition of any residual assets upon dissolution, and otherwise assuring responsible financial management.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

(iii) An understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities. (Also, see § 212.4(b)(9)).

(2) In reviewing the above documentation and during periodic review of private organizations, activities that result in a monetary gain to the membership, either individually or collectively, will be carefully considered by the head of the DoD installation.

(i) Income will not accrue to individual members, except through wages and salaries as employees of the private organization or through remuneration for services rendered, and will be derived primarily for the purpose of offsetting expenses of operation, which may include competitive awards or charitable contributions contemplated by the organization.

(ii) However, the head of the DoD installation may approve the operation of such a private organization as an investment club on the installation, providing compliance with all other policy provisions outlined above is required.

(3) Type 2 or Type 3 private organizations may be discontinued or dissolved upon determination of its membership or upon determination by the head of a DoD installation to withdraw authorization to operate on the installation.

§ 212.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)* (ASD(MRA&L)) is responsible for all policy matters related to the organization and monitoring of private organizations, not otherwise delineated in referenced issuances. Coordination of private organization matters will be accomplished with DoD Components through normal staff procedures.

(b) *DoD Components* will assure implementation of this Instruction and compliance with its provisions. Specifically, Heads of DoD Components, or their designees, will:

(1) Maintain cognizance over all private organizations located on the installations, facilities, or activities for which responsible, including their initial identification and classification, and

(2) Conduct a periodic review of each private organization in order to:

(i) Insure that the membership provisions and purposes for which created still apply, thereby justifying continuance. Any revisions to the conditions under which originally established will necessitate further review, documentation and approval action for continued recognition;

(ii) Determine conditions under which an audit of the funds of the private organization would be appropriate as part of an official inquiry designed to preserve the best interests of the United States, based on DoD Instruction 7600.6.[1]

(iii) Furnish reports or other information to the ASD(MRA&L) on private organizations as required, and in accordance with DoD Directive 5000.19.[1]

§ 212.6 Logistical support and services.

(a) The amount and type of support provided and/or authorized a private organization varies according to the authority under which organized. Type 1 private organizations have Federal sanction; provide important services to the DoD family, and thereby receive certain support, both reimbursable and nonreimbursable, from the head of the DoD installation. The DoD issuances cited in the text of this Part include provisions for support to applicable Type 1 private organizations. Other Type 1 private organizations authorized by a DoD Component may be provided similar reimbursable and nonreimbursable support. Type 2, affiliated private organizations, and Type 3, independent private organizations are provided support by the head of the DoD installation as prescribed below.

(b) The nature of the activities conducted by most Types 2 and 3 private organizations normally should require only enough space in which to conduct organizational meetings. If the use of the space, to include Government-owned portable equipment in place,

---

[1] See footnote to § 212.4(b)(8)(ii)(1).

BEST COPY AVAILABLE

utilities, and janitorial supplies is occasional and only incidental to other uses of the facility, and provided its use will entail no added maintenance expenses, reimbursement is not required.

(1) However, if the private organization has exclusive use of the facility or space on a full-time basis, an outgrant document is required under the authority of the Head of the DoD Component concerned.

(2) Reimbursement for any space occupied, utilities, maintenance, and other support services will be determined in accordance with policies prescribed in DoD Instruction 7230.7,[1] which, in general, prescribes that charges may be waived or reduced for a nonprofit activitiy contributing to the welfare of DoD personnel.

(c) Private organizations are responsible for furnishing or procuring equipment, supplies, and other materials at their own expense. However, Government-owned equipment may be loaned or rented to a private organization physically located on a DoD installation within the limitations imposed by mission, availability, and statutory authority for such utilization.

(1) Neither appropriated nor nonappropriated funds will be used to repair or otherwise restore equipment which has been used on a temporary or loan basis by tenant private organizations since such costs should be properly borne by the user.

(2) Nonappropriated funds will not be used to repair private organization equipment.

(d) Classification System For Private Organizations by Type and Subtype.

(1) *Types of Private Organizations.* (i) Type 1—Federally Sanctioned

(ii) Type 2—Affiliated

(iii) Type 3—Independent

(2) *Subtypes of Private Organizations.* (i) Financial Institutions

(ii) Community Services, Fraternal, and Benevolent

(iii) Labor Organizations and DoD Management Associations

(iv) Sports, Hobbies, and Crafts

(v) Distaff/Spouse Organizations

(vi) Youth Organizations

(vii) Professional, Scientific, and Management

(viii) Religious Groups

(3) *Examples of Private Organizations by Type and Subtype.*[2]

(e) Type 1—Federally Sanctioned.

SUBTYPES

Financial Institutions

Banking Offices
Credit Unions

Labor/Management

Labor Organizations
DoD Supervisors and Management Associations

Community Services, Fraternal & Benevolent

Component Relief/Aid Organizations
USO
Red Cross
United Seamen's Service

(f) Type 2—Affiliated.

SUBTYPES

Professional, Scientific and Management

Engineering or Scientific
NCO Associations
Nurses
Personnel Management
Financial Management

Sports, Hobbies & Crafts

ABC Bowling Leagues
Sports Officials
Affiliated Hobby or Craft Groups

Religious Groups

Altar Societies
Guilds
Youth Organizations

Community Services, Fraternal & Benevolent

Veterans Organizations
Surviving Spouse or Surviving Parent Organizations
Parent-Teach Association (PTA)
Ethnic Group Affiliations
Reserve or Retired Associations
Affiliated Community Service Clubs

---

[1] See footnote 1 on previous page.

[2] Specific organizations are listed herein for categorization purpose only. These organizations, as well as those not specifically identified, must conform to the policy provisions of this Instruction to be eligible to operate on DoD installations.

Youth Organizations

Junior Army Navy Guild Organization (JANGO)
4 H Clubs
Scouting Organizations
Little League

Distaff Spouse Organizations

(only those affiliated)

(g) Type 3—Independent.

Sports, Hobbies & Crafts

Model Clubs
Stamp, Coin, Other Collectors
Theater and Dance
Fish and Game
Golf Leagues
Investment Clubs

Youth Organizations

Contemporary Age Clubs (Teens, etc.)
Youth sports/recreation

Professional, Scientific and Management

Local, independent, unaffiliated organizations or groups

Community Services, Fraternal & Benevolent

Thrift Shops
School Booster Clubs
Local Ethnic Groups
Child Care Centers
Preschool and Kindergarten
Social Problem Study Groups

Distaff Spouse Organizations

Wives Clubs (may include Thrift Shop operation)
National origin clubs

Religious Groups

§ 212.7 Definitions.

(a) *DoD Family.* Active duty military personnel, retired members and those of Reserve components, dependents and surviving spouses of the foregoing, and authorized civilians as determined by DoD Components.

(b) *DoD Installation.* A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.

(c) *Private Organization.* A generally self-sustaining, non-Federal entity, incorporated or not, and constituted or established and operated on a DoD installation, with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

(d) *Type 1—Federally Sanctioned Private Organizations.* Type 1 private organizations are those which are recognized in accordance with specific DoD authority or by special authority granted at DoD Component level. All Type 1 private organizations, except those exempted in section D., are subject to the provisions of this Instruction. Examples of federally sanctioned private organizations are provided in § 212.6.

(e) *Type 2—Affiliated Private Organizations.* Type 2 private organizations which (1) operate on a DoD installation upon the written approval of the DoD installation commander, (2) operate as local affiliations of chapters, lodges (fraternal or benevolent organizations), posts (veterans' organizations), or elements of national or State chartered organizations of the private sector, and (3) engage in activities of special interest to a voluntary membership or group of participants; examples of which are provided in § 212.6.

(f) *Type 3—Independent Private Organizations.* Independent private organizations which are organized, established, operated and controlled *locally* by common interest groups conducting specific activities that fulfill certain accepted needs or wants of some members of the DoD family, and have no formal connection or affiliation with an organization outside of the installation; examples of which are provided in § 212.6. Local initiative is exercised in securing written permission from the head of the DoD installation for their operation on the DoD installation.

(g) *Subtype of Private Organizations.* For classification purposes this is a relatively homogeneous functional grouping of private organizations, based on one or more of the following characteristics, having similar purposes or objectives, furthering related interests or conducting related activities, and comprising membership or participation of contemporary age levels.

(1) A subtype designation may be applied to more than one type of private organization, since the function being

performed on a DoD installation is not limited by the connection or affiliation of the organization(s) comprising the subtype.

(2) For example, the funtion of community services, as a subtype of private organization, may be carried out through a Type 1 federally sanctioned private organization (Red Cross), a Type 2 affiliated private organization (PTA), or a Type 3 independent private organization (Thrift Shop).

(3) Section 212.6 provides a listing of the eight authorized classifications of private organizations by subtype and furnishes examples. The examples are illustrative and not all-inclusive.

(4) Classification of each private organization by type and subtype is a basis for positive identification of all private organizations and is a means of differentiating from nonappropriated fund instrumentalities.

PART 213—DoD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Sec.

213.1 Purpose.
213.2 Applicability and scope.
213.3 Definitions.
213.4 Policy.
213.5 Responsibilities.
213.6 Information requirements.
213.7 Release of information.
213.8 Use of information collected during military operations.
213.9 Use of military equipment and facilities.
213.10 Restrictions on participation of DoD personnel in civilian law enforcement activities.
213.11 Funding.

AUTHORITY: 10 U.S.C. 371-378.

SOURCE: 47 FR 14899, Apr. 7, 1982, unless otherwise noted.

§ 213.1 Purpose.

This part establishes uniform DoD policies and procedures to be followed with respect to support provided to Federal, State, and local civilian law enforcement efforts.

§ 213.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The term, "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 213.3 Definitions.

(a) *Civilian agency.* A government agency (other than the Department of Defense) in the following jurisdictions:

(1) The United States.

(2) A State (or political subdivision thereof).

(3) A territory or possession of the United States.

(b) *Civilian law enforcement official.* An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of the agency.

(c) *DoD intelligence component.* An organization listed in subsection C.4. of DoD Directive 5240.1,[1] November 30, 1979.

§ 213.4 Policy.

It is the policy of the Department of Defense to cooperate with civilian law enforcement officials to the maximum extent practicable. Under §§ 213.8 through 213.11, the implementation of this policy is consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law.

§ 213.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L))* shall: (1) Coordinate with civilian agencies on long-range policies to further DoD cooperation with civilian law enforcement officials.

(2) Provide information to civilian agencies to facilitate their access to DoD resources, including surplus equipment.

(3) Coordinate with the Department of Justice, the U.S. Coast Guard, and

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 301.

the U.S. Customs Service on matters related to the interdiction of the flow of illegal drugs into the United States.

(4) Develop guidance and approve actions as specified in § 213.8 through § 213.11 taking into account the requirements of DoD intelligence components and the interests of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

(5) Disseminate promptly interim guidance to permit the approving authorities designated in §§ 213.8 through 213.11 to grant requests for assistance before the issuance of implementing documents.

(6) Ensure that the responsibilities addressed in paragraphs (a) (1) through (5) of this section are conducted in a manner that is consistent with the needs of national security and military preparedness.

(b) *Heads of DoD Components* shall: (1) Disseminate promptly the text of 10 U.S.C. 371-378, along with the interim guidance issued by the ASD(MRA&L) under paragraph (a)(5) of this section, to ensure that field elements implement promptly congressional and departmental policy.

(2) Review training and operational programs to determine how assistance can be provided to civilian law enforcement officials, consistent with the policy in § 213.4, with a view toward identification of programs in which reimbursement can be waived under § 213.11.

(3) Issue implementing documents incorporating the guidelines and procedures set forth in this part to include the following:

(i) Implementation of procedures for prompt transfer of law enforcement information.

(ii) Establishment of local contact points in subordinate commands for purposes of coordination with civilian law enforcement officials.

(iii) Issuance of guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.

(c) The *Director, National Security Agency (NSA)/Chief, Central Security Service (CSS)* shall establish appropriate guidance for NSA/CSS.

(d) The *Joint Chiefs of Staff* shall: (1) Assist the ASD(MRA&L) in development of guidance for use by DoD Components in evaluating the impact of requests for assistance on national security and military preparedness.

(2) Advise the Secretary of Defense and the ASD(MRA&L) on the impact on national security and military preparedness of specific requests for assistance when such officials act as approving authorities.

(3) Advise approving authorities of the impact on national security and military preparedness of specific requests involving personnel assigned to a Unified or Specified Command.

§ 213.6 Information requirements.

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the heads of DoD Components to the ASD(MRA&L), the ASD(HA), and the General Counsel, DoD, showing action taken (approval, denial, or pending), and other appropriate information. The format of such report shall be prescribed by the ASD(MRA&L) and will be prepared in accordance with DoD Directive 5000.11,[1] December 7, 1964. This information requirement has been assigned Report Control Symbol DD-M(Q) 1595. Actions involving the use of classified means or techniques may be exempted from such report with the concurrence of the ASD(MRA&L).

§ 213.7 Release of information.

(a) Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. DoD Components may release such information, however, when approved under the procedures established by the head of the DoD Component concerned.

(b) When a DoD Component provides assistance under this part it may condition the provision of such assistance upon control by the DoD Component of the release of information to the public concerning such assistance.

---

[1] See footnote to § 213.3.

§ 213.8 Use of information collected during military operations.

(a) *Acquisition and dissemination.* DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. The heads of DoD Components shall prescribe procedures for the release of information upon reasonable belief that there has been such a violation.

(1) The provision of assistance under this § 213.8 shall be in accordance with 10 U.S.C. 371 and other applicable laws.

(2) The acquisition and dissemination of information under this § 213.8 shall be in accordance with DoD Directive 5200.27,[1] January 7, 1980, DoD Directive 5240.1,[1] and DoD 5240.1-r.

(3) DoD Components shall establish procedures for "routine use" disclosures of such information in accordance with 32 CFR Part 286a.

(4) Under procedures established by the head of the DoD Component concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under this provision may be provided to the El Paso Intelligence Center.

(5) Under guidance established by the head of the DoD Component concerned, the planning and execution of compatible military training and operations may take into account the needs of civilian law enforcement officials for information when the collection of information is an incidental aspect of training performed for a military purpose. In this regard, the needs of civilian law enforcement officials may be considered in scheduling routine training missions. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, nor does it permit conducting training or mission for the purpose of routinely collecting information about U.S. citizens.

(6) Nothing in this section modifies DoD policies or procedures concerning collection or dissemination of information for foreign intelligence or counterintelligence.

(7) The provision of assistance under this § 213.8 may not include or permit direct participation by a member of a Military Service in an interdiction of a vessel, aircraft, or a land vehicle, a search or seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law. *See* § 213.10.

(b) *Military preparedness.* Assistance may not be provided under this § 213.8 if provision of such assistance could affect adversely national security or military preparedness.

(c) *Funding.* To the extent that assistance under this § 213.8 requires DoD Components to incur costs beyond those that are incurred in the normal course of military operations, the funding provisions of § 213.11 are applicable.

§ 213.9 Use of military equipment and facilities.

(a) *Equipment and facilities.* DoD Components may make available equipment, base facilities, or research facilities to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with this enclosure.

(1) The ASD(MRA&L) shall issue guidance to ensure that the provision of assistance under this § 213.9 is in accordance with applicable provisions of 10 U.S.C. 372, 2576, and 2667 the Economy Act (31 U.S.C. 686); the Intergovernmental Cooperation Act of 1968; the Federal Property and Administrative Services Act of 1949; and other applicable laws.

(2) Such guidance also shall ensure application of the following Directives in applicable cases: 32 CFR Part 215; 32 CFR Part 201; DoD Directive 4160.24,[1] July 24, 1981; DoD Directive 4165.6,[1] December 22, 1976; DoD Directive 4165.20,[1] August 29, 1958; DoD Directive 5410.12,[1] April 21, 1973; 32 CFR 288; DoD Directive 7310.1,[1] July 10, 1970; DoD Directive 7730.53,[1] July 15, 1970 and such other guidance as may be issued by the ASD(MRA&L) and

---

[1] See footnote to § 213.3.

the Assistant Secretary of Defense (Comptroller) (ASD(C)).

(3) The provision of such assistance by DoD Intelligence Components is subject to DoD Directive 5240.1,[1] and DoD 5240.1-R.

(b) *Limitations on use of personnel.* (1) A request for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under paragraph (a) of this section, shall be considered under the guidance in § 213.10(a)(6).

(2) Personnel in DoD intelligence components also are subject to the limitations in DoD Directive 5240.1[1] and DoD 5240.1-R.

(c) *Military preparedness.* Assistance may not be provided under this § 213.9 if provision of such assistance could affect adversely national security or military preparedness. The implementing documents issued by the heads of DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

(d) *Approval authority.* Requests by civilian law enforcement officials for DoD assistance in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this § 213.9.

(1) Approval authority for military assistance in the event of civil disturbance or related matters requiring immediate action is governed by 32 CFR Part 215.

(2) Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46,[1] March 26, 1971.

(3) The following governs approval for assistance to civilian law enforcement officials in other circumstances:

(i) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded for consideration under § 213.10(e).

(ii) Requests for DoD intelligence components to provide assistance shall be forwarded for consideration under DoD Directive 5240.1 and DoD 5240.1-R.

(iii) Requests for arms, ammunition, tank-automotive equipment, vessels, and aircraft will be forwarded for consideration by the ASD(MRA&L).

(iv) Requests for loan or other use of equipment or facilities for more than 60 days (including a permanent disposition) are subject to approval by the head of the DoD Component, unless approval by a higher official is required by statutes or DoD Directives applicable to the particular disposition.

(v) Requests for use of other equipment or facilities may be approved by the Commanders-in-Chief (CINCs) of Unified and Specified Commands outside the Continental United States (CONUS); commanders of military installations or organizations who have been delegated such authority by the Secretary of the Military Department concerned, or the CINC; or heads of subordinate organizations within DoD Components who have been delegated such authority by the head of the DoD Component concerned.

(vi) All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(MRA&L). Requests will be forwarded and processed in keeping with the degree of urgency dictated by the situation.

(e) *Funding.* Funding requirements for assistance under this enclosure shall be established under the guidance in § 213.11.

§ 213.10 Restrictions on participation of DoD personnel in civilian law enforcement activities.

(a) *Statutory requirements.* (1) The primary restriction on military participation in civilian law enforcement activities is the Posse Comitatus Act (18 U.S.C. 1385), which provides:

> Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years or both.

(2) *Permissible direct assistance.* The following activities are not restricted by the Posse Comitatus Act

paragraph (a)(1) of this section, notwithstanding direct assistance to civilian law enforcement officials.

(i) Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include the following, depending on the nature of the DoD interest and the specific action in question:

(A) Actions related to enforcement of the Uniform Code of Military Justice (10 U.S.C. Chapter 47).

(B) Actions that are likely to result in administrative proceedings by the Department of Defense regardless of whether there is a related civil or criminal proceeding.

(C) Actions related to the commander's inherent authority to maintain law and order on a military installation or facility.

(D) Protection of classified military information or equipment.

(E) Protection of DoD personnel, DoD equipment, and official guests of the Department of Defense.

(F) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(ii) Actions that are taken under the inherent right of the U.S. Government, a sovereign national entity under the U.S. Constitution, to ensure the preservation of public order and the carrying out of governmental operations within its territorial limits, by force if necessary. This authority is reserved for unusual circumstances, and will be exercised only under 32 CFR Part 215, which permits use of this power in two circumstances:

(A) The emergency authority authorizes prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disaster, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situation.

(B) Protection of Federal property and functions authorizes Federal action, including the use of military forces, to protect Federal property and Federal governmental functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(iii) Actions taken pursuant to DoD responsibilities under 10 U.S.C. 331-334, relating to use of the military forces with respect to insurgency or domestic violence or conspiracy that hinders the execution of State or Federal law in specified circumstances. Actions under this authority are governed by 32 CFR Part 215.

(iv) Actions taken under express statutory authority to assist officials in the execution of the laws, subject to applicable limitations therein. The laws that permit direct military participation in civilian law enforcement include the following:

(A) Protection of national parks and certain other Federal lands. 16 U.S.C. 23, 78, 596.

(B) Enforcement of the Fishery Conservation and Management Act of 1976. 16 U.S.C. 1861(a).

(C) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons. 18 U.S.C. 112, 1116.

(D) Assistance in the case of crimes against members of Congress. 18 U.S.C. 351.

(E) Protection of the President, Vice President and other designated dignitaries. 18 U.S.C. 1751; The Presidential Protection Assistance Act of 1976 18 U.S.C. 3056.

(F) Actions taken in support of the neutrality laws. 22 U.S.C. 408, 461-62.

(G) Removal of persons unlawfully present on Indian lands. 25 U.S.C. 180.

(H) Execution of quarantine and certain health laws. 42 U.S.C. 97.

(I) Execution of certain warrants relating to enforcement of specified civil rights laws. 42 U.S.C. 1989.

(J) Loan of services, equipment, personnel, equipment, and facilities to the

Law Enforcement Assistance Administration. 42 U.S.C. 3756.

(K) Removal of unlawful enclosures from public lands. 43 U.S.C. 1065.

(L) Protection of the rights of a discoverer of a guano island. 48 U.S.C. 1418.

(M) Support of territorial governors in the event of civil disorders. 48 U.S.C. 1422, 1591.

(N) Actions in support of certain customs laws. 50 U.S.C. 220.

(3) *Restrictions on direct assistance.* Except as otherwise provided in this enclosure, the prohibition on use of military personnel "as a posse comitatus or otherwise to execute the laws" prohibits the following forms of direct assistance:

(i) Interdiction of a vehicle, vessel, aircraft or other similar activity.

(ii) A search or seizure.

(iii) An arrest, stop and frisk, or similar activity.

(iv) Use of military personnel for surveillance or pursuit of individuals, or as informants, undercover agents, investigators, or interrogators.

(4) *Training.* DoD Components may provide training to Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under § 213.9(a). This does not permit large scale or elaborate training, nor does it permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations except as otherwise authorized in this enclosure.

(5) *Expert Advice.* DoD Components may provide expert advice to Federal, State, or local law enforcement officials in accordance with 10 U.S.C. 371-378. This does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations except as otherwise authorized in this enclosure.

(6) *Use of DoD personnel to operate or maintain equipment.* A request for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under § 213.9(a) shall be considered under the following guidance:

(i) A request for assistance under § 213.9 may be made by the head of a civilian agency empowered to enforce the following laws:

(A) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(B) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324-28);

(C) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States or any other territory or possession of the United States.

(D) Any other law which establishes authority for DoD personnel to provide direct assistance to civilian law enforcement officials.

(ii) Assistance under this section shall be limited to situations where the training of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns.

(iii) The following types of assistance may be provided under this section:

(A) DoD personnel may be assigned to maintain or assist in maintaining equipment with respect to any criminal violation of the laws specified in paragraph (a)(6)(i) of this section.

(B) DoD personnel may be assigned to operate or assist in operating equipment to the extent the equipment is used for monitoring and communicating the movement of air and sea traffic with respect to any criminal violation of the laws specified in paragraph (a)(6)(i) of this section.

(C) In an emergency circumstance, equipment operated by or with the assistance of DoD personnel may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in paragraph (a)(6)(i) of this section, and to transport such law enforcement officials in connection with such operations, subject to the following limitations:

(*1*) Equipment operated by or with the assistance of DoD personnel may not be used to interdict or interrupt the passage of vessels or aircraft except when DoD personnel are otherwise authorized to take such action with respect to a civilian law enforcement operation.

(*2*) There must be a joint determination by the Secretary of Defense and the Attorney General that an emergency circumstance exists under 10 U.S.C. 374(c)(2). An emergency circumstance may be determined to exist for purposes of this subparagraph only when:

(*i*) The size and scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

(*ii*) Enforcement of a law listed in paragraph (a)(6)(i) of this section would be seriously impaired if the assistance described in this paragraph (a)(6)(ii)(C)(*2*)(*iii*) of this section were not provided.

(*3*) The emergency authority in this paragraph (a)(6)(iii)(C)(*3*) of this section may be used only with respect to large scale criminal activity at a particular point in time or over a fixed period. It does not permit use of this authority on a routine or extended basis.

(*4*) Nothing in this paragraph (a)(6)(iii)(C)(*4*) restricts the authority of military personnel to take immediate action to save life or property or to protect a Federal function as provided in paragraph (a)(1)(ii) of this section.

(D) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph (a)(6)(i) of this section, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by the Secretary of Defense, the ASD(MRA&L), or the head of the DoD Component concerned.

(7) *Other permissible assistance.* The following forms of indirect assistance activities are not restricted by the Posse Comitatus Act (paragraph (a)(1) of this section):

(i) Transfer of information acquired in the normal course of military operations. *See* § 213.8.

(ii) Such other actions, approved in accordance with procedures established by the head of the DoD Component concerned, that do not subject civilians to the exercise of military power that is regulatory, proscriptive, or compulsory in nature.

(b) *Exceptions based on status.* The restrictions in paragraph (a) of this section are not applicable to the following persons:

(1) A member of a reserve component when not on active duty or inactive duty for training.

(2) A member of the National Guard when not in the Federal service.

(3) A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a military officer, assistance will not be provided unless it would be permitted under paragraphs (a) or (c) of this section.

(4) A member of a Military Service when off-duty, and in a private capacity. A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction, control, or suggestion of DoD authorities.

(c) *Exceptions based on military service.* DoD guidance on the Posse Comitatus Act, as set forth in paragraphs (a) and (b) of this section, is applicable to the Navy and the Marine Corps as a matter of DoD policy, with such exceptions as may be provided by the Secretary of the Navy on a case-by-case basis.

(1) Such exceptions shall include requests from the Attorney General for assistance under 21 U.S.C. 873(b).

(2) Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft, a search or seizure, an arrest, or other activity that is likely to subject civilians to the exercise of military power that is regulatory, proscriptive, or compulsory in nature. Such approval may be granted only when the head of the civilian agency concerned verifies that:

(i) The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States, and enforcement of a law within the jurisdiction of the civilian agency would be seriously impaired if the assistance were not provided because civilian assets are not available to perform the mission; or

(ii) Civilian law enforcement assets are not available to perform the mission and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

(d) *Military preparedness.* Assistance may not be provided under this enclosure if provision of such assistance could affect adversely national security or military preparedness. The implementing documents issued by the heads of DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security military preparedness.

(e) *Approval authority.* Requests by civilian law enforcement officials for use of DoD personnel in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this § 213.10.

(1) Use of DoD personnel in civil disturbances and related matters is governed by 32 CFR 215, with the approval authorities specified therein.

(2) Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46.[1]

(3) The following governs approval for assistance to civilian law enforcement officials in other circumstances:

(i) The Secretary of Defense is the approval authority for requests that involve assignment of 50 or more DoD personnel or a period of assignment of more than 30 days.

(ii) The ASD(MRA&L) is the approval authority for other requests for assignment of personnel.

(iii) The approval authority in paragraphs (e)(3)(i) and (ii) of this section, may be delegated to the head of a DoD Component with respect to specified types of assistance by personnel for a period of six months or less in the following categories:

(A) Use of DoD personnel to provide training or expert advice in accordance with paragraphs (a) (4) and (5) of this section.

(B) Use of DoD personnel for equipment maintenance in accordance with paragraph (a)(6)(iii)(A) of this section.

(C) Use of DoD personnel for monitoring and communicating the movement of air and sea traffic in accordance with paragraph (a)(6)(iii)(B) of this section.

(D) Use of Navy or Marine Corps personnel under paragraph (c) of this section, except when prior approval of the Secretary of Defense is required under paragraph (c)(2) of this section.

(iv) Requests that involve DoD intelligence components are subject to the limitations in DoD Directive 5240.1 and DoD 5240.1-R, and are subject to approval by the Secretary of Defense.

(v) The views of the Joint Chiefs of Staff shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(MRA&L), or that otherwise involve personnel assigned to a Unified or Specified Command.

(vi) All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(MRA&L). Requests will be forwarded and processed in keeping with the degree or urgency dictated by the situation.

(f) *Funding.* Funding requirements for assistance under this enclosure shall be established by the ASD(MRA&L) under the guidance in § 213.11.

§ 213.11 Funding.

(a) *Establishment of guidance*—Funding requirements and related reporting procedures shall be established by the ASD(MRA&L), after consultation with the ASD(C) subject to the guidance of this § 213.11.

(b) *Procedural requirements*—(1) As a general matter, reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. The primary source of law for reimbursement requirements is the Economy Act. Other statutes may be applicable to particular types of assistance. *See* § 213.9(a).

---

[1] See footnote to § 213.3.

(2) Insofar as reimbursement is not required by law for a particular form of assistance, the authority to waive reimbursement is delegated to the ASD(MRA&L). *See* 10 U.S.C 377. A request for waiver may be granted in the following circumstances.

(i) When assistance under this part is provided as an incidental aspect of an activity that is conducted for a military purpose.

(ii) When assistance under this part involves use of DoD personnel in an activity that provides DoD with training or operational benefits that are substantially equivalent to the benefit of DoD training or operations.

(iii) When reimbursement is not otherwise required by law and it is determined that waiver of reimbursement will not have an adverse impact on military preparedness.

(3) The views of the Joint Chiefs of Staff as to the impact on military preparedness of a waiver of reimbursement will be considered by the ASD(MRA&L).

(4) In evaluating requests for waiver of reimbursement, the ASD(MRA&L) will take into consideration the budgetary resources available to civilian law enforcement agencies and past practices with respect to similar types of assistance.

(c) *Military preparedness.* Reimbursement shall not be waived if deletion of such funds from a DoD account could adversely affect the national security or military preparedness of the United States.

PART 214—ENVIRONMENTAL EFFECTS IN THE UNITED STATES OF DoD ACTIONS

Sec.

214.1 Reissuance and purpose.
214.2 Applicability and scope.
214.3 Definitions.
214.4 Policy.
214.5 Responsibilities.
214.6 Information requirements.

ENCLOSURE 1—DoD IMPLEMENTING PROCEDURES

ANNEX A—DoD LIST OF CATEGORICAL EXCLUSIONS

AUTHORITY: Pub. L. 91-190, 42 U.S.C. 4321, 4331-4335, 4341-4347, and E.O. 11514, as amended.

SOURCE: 44 FR 46842, Aug. 9, 1979, unless otherwise noted.

§ 214.1 Reissuance and purpose.

This part implements the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and provides policy and procedures to enable DoD officials to be informed of and take into account environmental considerations when considering the authorization or approval of major DoD actions in the United States. The CEQ regulations implement section 102(2) of the National Environmental Policy Act (NEPA) of 1969, Pub. L. No. 91-190 (1970), 42 U.S.C. 4321, 4331-4335, 4341-4347 (1976) (and Executive Order 11514, as amended.

§ 214.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

(b) This part is limited to DoD actions with environmental effects in the United States.

(c) The civil works activities under the jurisdiction of the Secretary of the Army and the Chief of Engineers are excluded from this part.

§ 214.3 Definitions.

(a) *United States* means all states, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. For the purpose of this Directive, United States also includes the commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas.

(b) Other terms used in this part are defined in 40 CFR Part 1508 of the CEQ regulations.

§ 214.4 Policy.

(a) The Department of Defense must act with care to ensure to the maximum extent possible that, in carrying out its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. Care must be taken to ensure that, consistent with other considerations of national policy and with national security requirements, practical means and measures are used to protect, restore and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The Department of Defense shall: (1) Assess environmental consequences of proposed DoD actions that could affect the quality of the environment in the United States in accordance with enclosure 1 and 40 CFR Parts 1500-1508.

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment.

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Utilize ecological information in planning and developing resource-oriented projects.

§ 214.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall: (1) Serve as the responsible official for all DoD environmental matters;

(2) Modify or supplement enclosure 1 of this part, when required, in a manner consistent with the policies set forth here;

(3) Provide assistance in the preparation of environmental assessments and statements, and assign, in consultation with appropriate Assistant Secretaries of Defense and heads of DoD Components, lead agency responsibility to prepare environmental documentation when more than one DoD Component is involved and agreement among the Components cannot be reached;

(4) Direct the preparation of environmental documents for specific proposed actions, when required;

(5) Provide, when appropriate, consolidated Department of Defense comments requested by other Federal agencies on draft and final environmental impact statements;

(6) Review proposed issuances of the Office of the Secretary of Defense that may have environmental implications; and

(7) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and state and local groups with respect to environmental analyses for proposed DoD actions affecting the quality of the environment in the United States.

(b) The *General Counsel, DoD,* shall provide advice and assistance concerning the requirements of this part.

(c) The *Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Directors of Defense*

Agencies, and *Commanders of the Unified and Specified Commands*, for operations under their jurisdiction, shall:

(1) Assess environmental consequences of proposed programs and actions within their respective DoD Component;

(2) Prepare and process environmental documents as required by this part;

(3) Integrate environmental considerations into their decisionmaking processes;

(4) Ensure that regulations and other major policy issuances are reviewed for consistency with the requirements of this part;

(5) Provide comments on environmental impact statements for actions within their area of expertness of concern; and

(6) Designate a single point of contact for matters pertaining to this part.

§ 214.6 Information requirements.

The environmental documents to be prepared under § 214.5, Enclosure 1, and 40 CFR Parts 1500-1508 are assigned Report Control Symbol DD-M(AR)1327 (formerly DD-H&E(AR)1327).

ENCLOSURE 1—DoD IMPLEMENTING PROCEDURES

A. General

1. Section 1507.3, Council on Environmental Quality regulations directs that Federal agencies shall as necessary adopt procedures to supplement the CEQ regulations. This enclosure provides those DoD implementing procedures.

2. This enclosure must be read together with the CEQ regulations and the Act when applying the NEPA process.

3. This enclosure is organized sequentially from early planning to final implementation of an action. Throughout this enclosure, references to the CEQ regulations identify the applicable section of those regulations; e.g., CEQ 1501.2.

B. Planning Consideration

1. *Early Planning.* DoD Components shall integrate the NEPA process during the initial planning stages of proposed DoD actions to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to preclude potential conflicts.

2. *Lead Agency.* a. To determine the lead agency for preparing environmental documentation for proposed actions in which more than one DoD Component is involved, and in which no other Federal agency is involved, DoD Components shall apply the criteria in CEQ 1501.5. The ASD(MRA&L) shall resolve disagreements.

b. When another Federal agency is involved and there is disagreement in lead agency determination, the ASD(MRA&L) shall attempt to resolve the differences. If unsuccessful, the ASD(MRA&L) shall file a request with CEQ for lead agency determination.

3. *Advising Applicants.* CEQ 1501.2(d) provides for advising private applicants or other non-Federal entities when DoD involvement is reasonably foreseeable. Actions involving applications by private applicants or other non-Federal entities are limited within the Department of Defense and pertain primarily to permits, leases, and related actions concerning the use of DoD lands and property.

a. The following are types of actions initiated by private persons, state or local agencies, and other non-Federal entities for which DoD involvement may be reasonably foreseeable.

(1) Requests for easements and rights-of-way on DoD lands,

(2) Grazing and agricultural leases, and

(3) Requests for permits, licenses, or other agreements for use of DoD real property by non-DoD entities.

b. When DoD involvement is reasonably foreseeable, DoD Components shall consult early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations.

c. Public notices or other means used to inform or solicit applicants for permits, leases, or related actions shall describe the studies or information foreseeably required for later DoD Component action.

d. When considering leasing or otherwise providing real property to non-DoD entities, DoD Components shall initiate the NEPA process, when required, as early as possible.

4. *Determination of Requirement for an Environmental Impact Statement.* DoD Components shall determine as early as possible whether to prepare an environmental impact statement. Early determination ensures that necessary environmental documentation is prepared and integrated with the decisionmaking process. To determine whether to prepare an environmental impact statement, DoD Components shall determine whether the proposal is one that:

a. Normally requires an environmental impact statement,

b. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion), or

c. Normally requires an environmental assessment but not necessarily an environmental impact statement.

5. *Actions That Normally Require an Environmental Impact Statement.* a. DoD Components shall determine if a proposal is one that normally requires an environmental impact statement. In some cases, it is readily apparent that a proposed action would have a significant impact on the environment. In that event, an environmental assessment is not required, and the DoD Component may begin the environmental impact statement phase. To determine those actions that normally do require the preparation of an environmental impact statement, the following considerations, which DoD Components may supplement, are provided:

(1) Potential for significant degradation of environmental quality.

(2) Potential for threat or hazard to the public.

(3) Potential for significant impact on protected natural or historic resources.

b. DoD component procedures will identify those typical classes of actions that normally require the preparation of environmental impact statements.

c. In any case involving a proposed action of the sort that normally does require an environmental impact statement, a DoD Component may still prepare an environmental assessment to determine if an environmental impact statement is required based on the particular facts. If a determination is made based on the assessment that no environmental impact statement is required on the particular facts, a finding of no significant impact will be prepared and made available to the public in accordance with paragraph C.4. of this enclosure.

6. *Categorical Exclusion.* The CEQ regulations provide for the establishment of categorical exclusions (CEQ 1507.3(b)) for those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Categorical exclusions will help DoD Components avoid unnecessary effort and concentrate resources on significant environmental issues.

a. *Criteria.* Considerations to assist in identifying categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(1) Minimal or no significant effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Social and economic effects only.

(5) Similarly to actions previously assessed and found to have no significant environmental impact.

b. *List of Categorical Exclusions.* Categories of actions that the Department of Defense has determined to have no significant effect on the quality of the human environment and for which environmental impact statements and environmental assessments are not required are identified in Annex A to this enclosure.

c. *Changes to the List of Categorical Exclusions.* (1) The DoD list of categorical exclusions is reviewed and refined as additional categories are identified. DoD Components may recommend additions or changes to this list. Recommendations shall be submitted to the ASD (MRA&L).

(2) DoD Components are encouraged to include in their regulations to implement this Directive addition categorical exclusions that they identify. Categorical exclusions that one DoD Component identifies that may be applicable to other DoD Coponents should be brought to the attention of the ASD(MRA&L).

d. *Extraordinary Circumstances.* If extraordinary circumstances exist indicating that a normally excluded action may have a significant environmental effect, an environmental assessment will be prepared for such otherwise categorically excluded action. Factors to consider in determining whether extraordinary circumstances exist include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, of already existing poor environmental conditions.

(3) Presence of endangered species, archeological remains, or other cultural, historic, or protected resources, and

(4) Use of hazardous or toxic substances.

7. *Actions That Normally Require an Environmental Assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify for categorical exclusion, the DoD Component shall prepare an environmental assessment.

C. Environmental Assessment Phase

1. *When to Prepare.* DoD Components shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is to be prepared.

2. *Content and Format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement or whether to prepare a finding of no significant impact, to aid in compliance with NEPA when no

environmental impact statement is necessary, and to facilitate preparation of a statement when one is necessary. Preparation of an environmental assessment generally does not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussions of the following:

a. Need for the proposed action.

b. Alternatives considered when the proposed action involves unresolved conflicts concerning alternative uses of available resources.

c. Environmental impacts of the proposed action and alternatives.

d. Listing of agencies and persons consulted, and

e. Conclusion of whether to prepare an environmental impact statement or a finding of no significant impact.

3. *Public Participation.* DoD Components shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," factors that may be considered include:

a. Magnitude of the proposal.

b. Likelihood of public interest.

c. Need to act quickly, and

d. National security classification issues.

4. *Finding of No Significant Impact.* If a DoD Component determines on the basis of the environmental assessment not to prepare an environmental impact statement, the DoD Component shall prepare a finding of no significant impact in accordance with CEQ 1501.4(e) and make the finding of no significant impact available to the affected public as specified in CEQ 1501.4(e) and CEQ 1506.6. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

D. Environmental Impact Statement Phase

1. *Notice of Intent.* When a DoD Component decides to prepare an environmental impact statement, it shall publish a notice of intent in the FEDERAL REGISTER. The notice of intent shall be published before initiation of the scoping process.

2. *Scoping.* After determination that an environmental impact statement should be prepared and publication of the notice of intent, the DoD Component shall initiate the scoping process in accordance with CEQ 1501.7.

3. *Preparation.* Detailed procedures for preparation of the environmental impact statement are provided in CEQ 1502. The recommended format provided in CEQ 1502.10 is the standard format for DoD environmental impact statements. Requests for exception will be submitted to the ASD(MRA&L) for approval on a case-by-case basis.

4. *Supplemental Environmental Impact Statements.* DoD Components may at any time supplement a draft or final environmental impact statement. DoD Components shall prepare a supplement to either the draft or final environmental impact statement in accordance with CEQ 1502.9(c). DoD Components normally will prepare, circulate, and file a supplement to a statement in the same manner (exclusive of scoping) as a draft or final statement. The supplement shall be included as part of the formal administrative record to be considered in the decisionmaking process. Exceptions to these procedures shall be requested from the ASD(MRA&L), who may undertake the discussions with the CEQ.

5. *Tiering.* DoD Components should emphasize the use of tiering (CEQ 1502.20) of environmental impact statements to eliminate repetitive discussions of the same issues and to focus the issues.

6. *Combining Documents.* Any environmental document prepared in the NEPA process may be combined with any other agency document to reduce duplication (CEQ 1506.4). If an environmental impact statement for a particular action already exists, regardless of what Federal agency prepared it, no new statement is required by this Directive (CEQ 1506.3).

7. *Incorporation by Reference.* DoD Components shall incorporate material into the environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action (CEQ 1502.21).

8. *Information on the NEPA Process.* Information or status reports on environmental impact statements and other elements of the NEPA process shall be provided to interested persons upon request. This does not, however, encompass standing or blanket requests.

a. Each DoD Component shall designate in its regulation implementing this part where interested persons can obtain information.

b. For those actions relating to the Office of the Secretary of Defense, information is available by writing the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Washington, D.C. 20301.

9. *Circulation of Environmental Impact Statements.* DoD Components shall circulate draft and final environmental impact statements as prescribed in CEQ 1502.19. In addition, DoD Components shall provide one copy of each draft and each final statement to the ASD(MRA&L).

10. *Classified Material.* It may be necessary for DoD Components to include classified material in environmental documentation. Classified information in environmen-

tal documents shall be safeguarded in accordance with Executive Order 12065 implemented by DoD 5200.1-R (32 CFR Part 159). The requirements for circulation (CEQ 1502.19) and public involvement (CEQ 1506.6) do not apply to classified environmental documents except where segregation of material and circulation and involvement can be accomplished consistently with the provisions of DoD 5200.1-R. When feasible, environmental documents may be organized in such a manner that classified portions can be included as annexes so that unclassified portions can be made available to the public in the normal manner. This normally will not be possible when the proposal itself is classified.

E. Preimplementation Actions

1. *Decisionmaking.* DoD Components shall ensure that the NEPA process is integrated into the decisionmaking process. Because of the size and diversity of the Department of Defense, it is not feasible to describe in this part the decisionmaking process for each of the various DoD programs. Proposals and actions may be initiated at any level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, funding, and authority. It is necessary, therefore, that DoD Components provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decisionmaking process. That guidance should include procedures to ensure that:

a. Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, and steps are taken to ensure that the NEPA process coincides with these decision points.

b. Relevant environmental documents, comments, and responses accompany a proposal through existing DoD Component review processes so that they can be considered by DoD Component decisionmakers.

c. The alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in relevant environmental documents, and the decisionmaker considers all the alternatives described in the environmental impact statement.

2. *Record of Decision.* In those cases requiring environmental impact statements, DoD Components, at the time of the decision or, if appropriate, the proposal to Congress, shall prepare a concise public record of agency decision. The record of decision is not intended to be an extensive, detailed document. Rather, it is a concise document that sets forth the decision, identifies the alternatives considered in reaching the decision, specifies the environmentally preferable alternative or alternatives, indicates other factors that were balanced in the decisionmaking process, and states whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not (CEQ 1505.2).

3. *Mitigation.* Throughout the NEPA process, DoD Components shall, where possible, give consideration to mitigation measures to avoid or minimize environmental harm. Mitigation measures or programs shall be identified, when appropriate, in the environmental documents and made available to decisionmakers. Mitigation and other conditions that have been established in the environmental impact statement or during its review, and that have been committed as part of the decision, shall be implemented.

4. *Monitoring.* If a DoD Component determines that monitoring is necessary to ensure that mitigation measures, to which a commitment has been made, are carried out, it shall adopt a monitoring program. DoD Components shall, upon request, provide monitoring information to the public and to cooperating and commenting agencies, as specified in CEQ 1505.3. This does not, however, include standing or blanket requests for periodic reporting.

5. *Emergencies.* In the event of an emergency, DoD Components may be required to take immediate action with significant environmental impact. This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. DoD Components shall notify the ASD(MRA&L) of the emergency, who shall undertake the required consultation with the CEQ. In no event shall DoD Components delay an emergency action necessary to the national security, or for preservation of human life, for the purpose of complying with the provisions of this Directive or the CEQ regulations. If an emergency requires that an action be taken without delay, the ASD(MRA&L) shall be notified as promptly as is possible. The requirement for notification where action must be taken without delay is not a requirement for prior notification.

ANNEX A—DoD LIST OF CATEGORICAL EXCLUSIONS

1. Preparation of regulations, directives, manuals, or other guidance documents that implement, without substantial change, the regulations, directives, manuals, or other guidance documents from higher headquarters or another Federal agency.

2. Preparation of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusion.

3. Routine installation maintenance and grounds-keeping activities.

4. Minor construction conducted in accordance with an approved installation master plan that does not significantly alter land use, provided that the operation of the completed project would not of itself have a significant environmental impact.

5. Studies that involve no commitment of resources other than manpower and funding.

6. Proposed actions that, based on sound judgment, are of such an environmentally insignificant nature as clearly not to meet the threshold for requiring an environmental assessment or environmental impact statement.

7. Other categories as identified by DoD Components in their regulations implementing this part.

PART 215—EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES

Sec.

215.1 Purpose and scope.
215.2 Applicability.
215.3 Definitions.
215.4 Legal considerations.
215.5 Policies.
215.6 Responsibilities.
215.7 Command relationships.
215.8 Organization and administration.
215.9 Providing military resources to civil authorities.
215.10 Funding.

AUTHORITY: Chapter 15 of title 10 U.S.C. (10 U.S.C. 331 et seq.).

SOURCE: 37 FR 3637, Feb. 18, 1972, unless otherwise noted.

§ 215.1 Purpose and scope.

This part establishes uniform Department of Defense policies, assigns responsibilities, and furnishes general guidance for utilizing DoD military and civilian personnel, facilities, equipment or supplies:

(a) In support of civil authorities during civil disturbances within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof.

(b) In other related instances where military resources may be used to protect life or Federal property or to prevent disruption of Federal functions.

§ 215.2 Applicability.

This part is applicable to all components of the Department of Defense (the Military Departments, Organization of the Joint Chiefs of Staff, Defense Agencies, and the unified and specified commands) having cognizance over military resources which may be utilized in accordance with the policies set forth herein.

§ 215.3 Definitions.

(a) Civil disturbances are group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring the use of Federal armed forces pursuant to the provisions of Chapter 15 of Title 10, United States Code.

(b) Federal property is that property which is owned, leased, possessed, or occupied by the Federal Government.

(c) Military resources include military and civilian personnel, facilities, equipment, and supplies under the control of a DoD component.

(d) A Federal function is any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

§ 215.4 Legal considerations.

(a) Under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local governments, which have the necessary authority to enforce the laws. The Federal Government may assume this responsibility and this authority only in certain limited instances.

(b) Aside from the constitutional limitations of the power of the Federal Government at the local level, there are additional legal limits upon the use of military forces within the United States. The most important of these from a civil disturbance standpoint is the Posse Comitatus Act (18 U.S.C. 1385), which prohibits the use of any part of the Army or the Air Force to execute or enforce the laws, except as authorized by the Constitution or Act of Congress.

(c) The Constitution and Acts of Congress establish six exceptions, generally applicable within the entire territory of the United States, to which the Posse Comitatus Act prohibition does not apply.

(1) The constitutional exceptions are two in number and are based upon the inherent legal right of the U.S. Government—a sovereign national entity under the Federal Constitution—to insure the preservation of public order and the carrying out of governmental operations within its territorial limits, by force if necessary.

(i) *The emergency authority.* Authorities prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situations.

(ii) *Protection of Federal property and functions.* Authorizes Federal action, including the use of military forces, to protect Federal property and Federal governmental functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(2) There are four exceptions to the Posse Comitatus Act based on Acts of Congress.

(i) In the cases of each of the first three of those described, paragraphs (c)(2)(i) (*a*), (*b*), and (*c*) of this section, personal Presidential action, including the issuance of a proclamation calling upon insurgents to disperse and retire peaceably within a limited time, is a prerequisite.

(*a*) *10 U.S.C. 331.* Authorizes use of the militia and Armed Forces when a State is unable to control domestic violence, and a request for Federal assistance has been made by the State legislature or governor to the President. Implements Article IV, section 4, of the Constitution.

(*b*) *10 U.S.C. 332.* Authorizes use of the militia and Armed Forces to enforce Federal law when unlawful obstructions or rebellion against the authority of the United States renders ordinary enforcement means unworkable. Implements Article II, section 3, of the Constitution.

(*c*) *10 U.S.C. 333.* Authorizes use of the militia and Armed Forces when domestic violence or conspiracy hinders execution of State or Federal law, and a State cannot or will not protect the constitutional rights of the citizens. Implements Article II, section 3, and the 14th Amendment of the Constitution.

(*d*) *House Joint Resolution 1292, June 6, 1968.*[1] Directs all departments of the Government, upon the request of the Secret Service, to assist that Service in carrying out its statutory duties to protect Government officials and major political candidates from physical harm. Assistance to the Secret Service is governed by DoD Directive 3025.13, "Employment of Department of Defense Resources in Support of the United States Secret Service," July 15, 1968.[2]

(ii) It should be noted that none of the above authorities, in and of itself, provides sufficient legal basis to order members of the Reserve components to active Federal service.

§ 215.5 Policies.

(a) The employment of DoD military resources for assistance to civil authorities in controlling civil disturbances will normally be predicated upon the issuance of a Presidential Executive order or Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality. Exceptions to this condition will be limited to:

---

[1] Although this resolution has been placed in the Statutes at Large as Public Law 90-331, 82 Stat. 170, it has not been codified; it is set out in the notes to 18 U.S.C. 3056.

[2] Filed as part of original copies available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Code: 300.

(1) Cases of sudden and unexpected emergencies as described in § 215.4(c)(1)(i), which require that immediate military action be taken.

(2) Providing military resources to civil authorities as prescribed in § 215.9 of this part.

(b) The Attorney General of the United States has been designated to receive and coordinate preliminary requests from States for Federal military assistance authorized by 10 U.S.C. 331 (§ 215.4(c)(2)(i)(*a*)). Formal requests from States for such aid will be made to the President, who will determine what Federal action will be taken.

(c) The Secretary of the Army is delegated any and all of the authority of the President under chapter 15 of title 10, U.S.C. (§ 215.4(c)(2)(i) (*a*), (*b*), and (*c*)) which has been or may be hereafter delegated by the President to the Secretary of Defense.

(d) The Secretary of the Navy and the Secretary of the Air Force are delegated all that authority which has been or may be hereafter delegated by the President to the Secretary of Defense to order to active duty, units and members of the Reserve Components under their respective jurisdictions, except National Guard units and members, for use pursuant to Chapter 15 of title 10, U.S.C. (§ 215.4(c)(2)(i) (*a*), (*b*), and (*c*)).

(e) DoD components and their subordinate activities will coordinate with local civil authorities or local military commanders as appropriate, to assure mutual understanding of the policies and procedures to be adhered to in an actual or anticipated civil disturbance situation.

(f) DoD civilian employees generally should not be used to assist civil authorities in connection with civil disturbances, except as provided for in § 215.9(b)(3).

(g) The prepositioning of more than a battalion-sized unit, as authorized in § 215.6(a)(6), will be undertaken only with the approval of the President. Requests for the prepositioning of forces will be addressed to the Attorney General.

§ 215.6 Responsibilities.

(a) The Secretary of the Army is designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and the deployment and employment of military resources in the event of civil disturbances. As DoD Executive Agent, the Secretary of the Army (or the Under Secretary of the Army, as his designee) is responsible for:

(1) Providing policy and direction concerning plans, procedures, and requirements to all DoD components having cognizance over military resources which may be employed under the provisions of this part.

(2) Improving and evaluating the capabilities of the National Guard to deal with civil disturbances.

(3) Establishing DoD policies and procedures for: (i) Calling the National Guard to active Federal service and ordering the National Guard and other Reserve components to active duty; and (ii) the employment of such forces that may be required to carry out the purposes of this part.

(4) Calling to active Federal service:

(i) The Army National Guard units or members required to carry out the provisions of the Presidential Executive order or other appropriate authority.

(ii) The Air National Guard units or members required to carry out the provisions of the Presidential Executive order or other appropriate authority, subject to the provisions of paragraph (c)(1)(i) of this section.

(5) Providing military resources of the U.S. Army, consistent with defense priorities to include:

(i) The military resources of the Army National Guard called to active Federal service under the provisions of paragraph (a)(4)(i) of this section.

(ii) The military resources of the Army Reserve (other than Army National Guard) ordered to active duty to carry out the purposes of this part.

(6) Exercising through designated military commanders the direction of military resources committed or assigned for employment in the event of actual or potential civil disturbances. When circumstances warrant, such direction will include: (i) Alerting, and,

if necessary, prepositioning predesignated ground forces; and (ii) directing the Secretary of the Air Force to alert and provide the necessary airlift resources (see § 215.5(g)).

(7) Devising command, control, and communications arrangements to insure effective coordination and responsiveness among Defense agencies, military departments, the Joint Chiefs of Staff, and Commanders-in-Chief (CINCs) of unified and specified commands, under conditions of prepositioning, deployment, or employment of military resources. Maximum utilization will be made of existing reports of the Joint Reporting Structure (JRS), as prescribed in JCS Pub 6.[3] Arrangements and reports affecting commanders of unified and specified commands will be coordinated with the JCS.

(8) Promulgating in implementation of DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," March 1, 1971,[1] strict policy guidelines designed to restrict to the maximum extent consistent with the effective conduct of actual civil disturbance operations the collection and maintenance of intelligence data in support of military civil disturbance planning and operations within the Department of Defense.

(9) Keeping the Secretary of Defense informed of unusual military resource requirements (actual or potential) and other significant developments in connection with civil disturbance planning and operations.

(10) Establishing procedures for the review and coordination of all DoD components' directives, instructions, and plans affecting civil disturbance planning and operations to assure conformity with DoD policies stated herein and DoD Executive Agent policies.

(11) Providing for the establishment of a DoD Civil Disturbance Steering Committee and a Directorate of Military Support (see § 215.8).

(12) Providing the necessary facilities, equipment, and personnel as required by the Assistant Secretary of Defense (Public Affairs) in the accomplishment of his public affairs responsibilities set forth in paragraph (f) of this section.

(13) Within the restrictions established by DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," March 1, 1971,[1] and the implementing guidelines referred to in paragraph (a)(8) of this section, providing essential planning, operational, and intelligence data to the National Military Command Center (NMCC) and the military service command centers on a timely basis to insure that the National Command Authorities and appropriate military service command authorities are adequately informed.

(b) The Joint Chiefs of Staff are responsible for:

(1) Establishing procedures that will promptly transfer military resources that are assigned to unified and specified commands (i) to the military departments for civil disturbance operations in the Continental United States (CONUS) or (ii) to unified commands for such operations outside the CONUS, as directed by the DoD Executive Agent and consistent with defense priorities.

(2) Maintaining an appropriate strategic reserve for worldwide employment and contingency operations.

(3) Insuring that directives concerning civil disturbances are issued to the commanders of unified commands, for the employment of military resources outside the CONUS, in accordance with direction and guidance provided by the DoD Executive Agent.

(c) The Secretary of the Air Force is responsible for:

(1) Providing military resources of the U.S. Air Force, as required by the DoD Executive Agent and consistent with defense priorities, to include:

(i) Designating and providing the specific units or members of the Air National Guard to be called to active

---

[3] Not available to the public. Copies have been distributed to appropriate military commanders.

[1] See footnote 1 to § 215.4(c)(2)(i)(*d*).

Federal service under the provisions of paragraph (a)(4)(ii) of this section.

(ii) Designating and providing the military resources of the Air Force Reserve (other than Air National Guard) order to active duty to carry out the purposes of this part.

(2) Exercising for the DoD Executive Agent, through designated military commanders, coordinating authority over and direction of DoD provided military and commercial obligated airlift resources used to fulfill civil disturbance airlift requirements.

(3) Providing airlift to deploy and redeploy civil disturbance forces and for supply, resupply, and aeromedical evacuation.

(d) The Secretary of the Navy is responsible for:

(1) Designating and providing military resources of the U.S. Navy and the U.S. Marine Corps, as required by the DoD Executive Agent and consistent with defense priorities, to include ordering to active duty and utilizing the resources of the Naval Reserve and the Marine Corps Reserve required to carry out the purposes of this directive.

(2) Insuring that Navy and Marine forces committed in connection with civil disturbances are trained and equipped in accordance with criteria established by the DoD Executive Agent.

(3) Making airlift resources available to the Secretary of the Air Force, consistent with defense priorities, as requested by him in the accomplishment of his airlift responsibilities set forth in paragraph (c) of this section.

(e) The Defense agencies are responsible for providing military resources as required, and advice and assistance on matters within their spheres of responsibility, to the DoD Executive Agent and to the Secretaries of the military departments and to the Joint Chiefs of Staff in the discharge of their responsibilities.

(f) The Assistant Secretary of Defense (Public Affairs) is responsible for all DoD public affairs matters related to civil disturbances. To assure efficiency and responsiveness in keeping the public fully informed, he will:

(1) Provide direction and guidance to the DoD Executive Agent on all aspects of public release of information relating to civil disturbances.

(2) Assign Public Affairs representatives, of appropriate rank, to the Directorate of Military Support during civil disturbance operations.

(3) Designate as required onsite DoD Public Affairs Chiefs who will furnish appropriate advice and guidance to task force commanders and, upon request or by direction of appropriate authorities, to other representatives of the Federal Government. The onsite Public Affairs Chief is responsible for releasing all military information to the public in the affected area(s). He will be responsible for such other public affairs functions as directed by competent authority. In the event of a disagreement concerning the releasing of military information to the public between a task force commander and the onsite Public Affairs Chief, the issue will be resolved by the ASD(PA) who will coordinate with the DoD Executive Agent to the extent feasible.

§ 215.7 Command relationships.

(a) In the event of civil disturbances within the CONUS:

(1) Military resources of the unified or specified commands will be transferred by the JCS to their respective military departments, when directed by the DoD Executive Agent. (Such resources will revert to the unified or specified commands when directed by the DoD Executive Agent.)

(2) The DoD Executive Agent is delegated the authority to exercise, through the Chief of Staff, U.S. Army, the direction of those forces assigned or committed to him by the military departments.

(b) In the event of civil disturbances outside of CONUS, the DoD Executive Agent is delegated the authority to exercise the direction of those forces assigned or committed to the commanders of unified or specified commands through the Chief of Staff, U.S. Army, and Task Force Commanders designated by JCS.

(c) At objective areas, designated task force commanders will exercise operational control over all military forces assigned for employment in the event of civil disturbances.

§ 215.8 Organization and administration.

(a) A DoD Civil Disturbance Steering Committee will be established to provide advice and assistance to the DoD Executive Agent concerning civil disturbance matters. The Committee Chairman will be the Under Secretary of the Army. Members will include:

Deputy Attorney General of the United States.
Assistant Secretaries of Defense (Comptroller) and (Public Affairs).
General Counsel of the DoD.
Under Secretaries of the Navy and Air Force.
Vice Chiefs of Staff of the Army and Air Force.
Vice Chief of Naval Operations and Assistant Commandant of the Marine Corps.
Representative of the JCS.

(b) A Directorate of Military Support (DOM's) will be established by the DoD Executive Agent with a joint service staff under the Chief of Staff, U.S. Army. The Department of the Army will provide the Director and the Department of the Air Force will provide the Deputy Director. The DOMs will plan, coordinate, and direct civil disturbance operations.

§ 215.9 Providing military resources to civil authorities.

This section provides general guidance for the handling of requests for DoD facilities, personnel, equipment, or supplies, received from officials of the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof, for use in connection with civil disturbances.

(a) *Loan policy.* Civil authorities, National Guard, and Federal agencies will be encouraged to provide sufficient resources of their own, so as to minimize the need to rely on DoD assistance.

(1) *Classification of resources.* Military resources will be classified into three groups, as follows:

(i) *Group One.* Personnel, arms, ammunition, tank-automotive equipment, and aircraft.

(ii) *Group Two.* Riot control agents, concertina wire, and other like military equipment to be employed in control of civil disturbances which is not included in Group One.

(iii) *Group Three.* Firefighting resources (to include operating personnel); equipment of a protective nature (such as masks, helmets, body armor vests) and other equipment not included in Group One or Two (such as clothing, communications equipment, searchlights); and the use of DoD facilities.

(2) Requests for personnel to be used in a direct law enforcement role are not within the purview of this part and must be made by the legislature or governor of a State in accordance with 10 U.S.C. 331. Pursuant to the Posse Comitatus Act, DoD operating personnel employed in connection with loaned equipment may not be used in a direct law enforcement role.

(3) Repair parts and POL items are classified according to the group of the equipment for which the parts or POL are intended.

(b) *Approval of requests.* (1) Requests for Group One military resources may be granted only with the personal approval of the DoD Executive Agent or, when designated by him for that purpose, the Under Secretary of the Army.

(2) Requests for Group Two military resources may be granted only with the personal approval of the DoD Executive Agent, or the following individuals when designated by him for that purpose: (i) The Under Secretary of the Army; (ii) the Director and Deputy Director of Military Support; or (iii) a Task Force Commander employed at an objective area during a civil disturbance.

(3) Requests for Group Three resources may be granted by Secretaries of the military departments, CINCs of unified and specified commands outside CONUS; or commanders of military installations or organizations who have been delegated such authority by the appropriate Service Secretary or CINC.

(i) Installation commanders are authorized to provide emergency explosive ordnance disposal service in accordance with applicable regulations of respective military departments.

(ii) The Director, Defense Supply Agency, is authorized to approve requests from subordinate agencies for firefighting assistance in connection with civil disturbances. Where installation fire departments have mutual aid agreements with nearby civil communities, the installation commander is authorized to provide emergency civilian or mixed civilian/military firefighting assistance. In the absence of a mutual aid agreement and when it is in the best interest of the United States, a commander with Group Three approval authority is authorized to provide emergency civilian or mixed civilian/military assistance in extinguishing fires and in preserving life or property from fire, within the vicinity of an installation. In either case, civilian firefighters may be used provided:

(*a*) In civil disturbance situations where there is significant danger of physical harm to firefighters, the civilian employees volunteer for the assignment. (DoD civilian employees acting in this volunteer capacity are acting as Federal employees.)

(*b*) Firefighting equipment will not be used for riot control.

(*c*) Civil authorities recognize that prior to the commitment of Federal forces to assist in restoring law and order, the protection of firefighting crews and equipment is the responsibility, in ascending order, of municipal, county, and State officials. Failure on the part of such authorities to recognize this responsibility and/or to provide adequate protection will be grounds for refusal to commit installation resources or for withdrawal of resources already committed.

(4) Requests for Groups One, Two, or Three resources, and for renewal of outstanding loans, may be denied at any level in the chain of command down to and including commanders delegated Group Three approval authority.

(c) *Processing of requests.* (1) All requests will be promptly submitted through channels to the appropriate approving authorities using the format established by the DoD Executive Agent.

(2) Requests will be forwarded and processed in keeping with the degree of urgency dictated by the situation.

(3) Requests received by personnel of Defense agencies will be referred to local military commanders for processing, except that DSA subordinate agencies will forward requests for firefighting assistance to DSA.

(4) Request from civil law enforcement agencies for training assistance related to the control of civil disturbances will not be approved at the local level. Such requests should be referred to the nearest U.S. attorney, Department of Justice.

(d) *Reporting of requests.* (1) Reports of all requests for military resources (approved, denied, or pending) will be prepared by all appropriate approving authorities, using the format established by the DoD Executive Agent, and forwarded through channels as follows:

(i) To the military department headquarters, in the case of requests received in the CONUS by the four Services.

(ii) To the DoD Executive Agent, in the case of requests for firefighting assistance received by the Defense Supply Agency.

(iii) To the JCS, in the case of requests received by organizations or installations over which the commanders of the unified and specified commands exercise command authority.

(2) Reports received by the military department headquarters and JCS will be transmitted to the DoD Executive Agent, who, in turn, will transmit information copies of all approved requests for Groups One and Two military resources to the General Counsel of the DoD and the Deputy Attorney General of the United States.

(3) In addition, a weekly summary report of all requests will be compiled by the DoD Executive Agent, showing action taken (approved, denied, or pending) and submitted to the General Counsel of the DoD, the Assistant Secretary of Defense (Installations and Logistics), and the Deputy Attorney General of the United States. Negative summary reports are required.

(4) The reporting requirements prescribed herein are assigned Report Control Symbol DD-A(AR)1112.

§ 215.10 Funding.

(a) Reporting requirements to provide for financing costs associated with civil disturbance operations, to include reimbursement of military department expenditures, will be in accordance with DoD Instruction 7200.9, "Financing and Reporting Costs of Military Resources Used in Civil Disturbances," January 26, 1970,[4] and DoD Executive Agent implementing instructions.

(b) Military assistance (Groups One, Two, and Three military resources) provided to civil authorities, under the provisions of § 215.9, will be on a reimbursable or reclaimable basis as appropriate.

PART 216—IDENTIFICATION OF INSTITUTIONS OF HIGHER LEARNING THAT BAR RECRUITING PERSONNEL FROM THEIR PREMISES

Sec.

216.1 Purpose.
216.2 Applicability.
216.3 Policy.
216.4 Responsibilities.
216.5 Procedures.
216.6 Information requirements.
APPENDIX A—SAMPLE LETTER OF INQUIRY

AUTHORITY: Pub. L. 92-436, 606(a), 1973.

SOURCE: 49 FR 22802, June 1, 1984, unless otherwise noted.

§ 216.1 Purpose.

This part implements Pub. L. 92-436 and updates policy, procedures, and responsibilities for identifying and taking action against institutions of higher learning that bar recruiting personnel from their premises.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DOD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Policy.

(a) Under Pub. L. 92-436, funds appropriated for the Department of Defense may not be used at any institution of higher learning if the Secretary of Defense or designee determines that recruiting personnel of any Military Service are barred by the policy of the institution from the premises of the institution. If recruiting personnel are barred from the premises of a subordinate element of an institution by the policy of such subordinate element, and the policy does not bar effectively recruiting at other subordinate elements, the prohibition on use of funds applies only to the elements in which recruiting is barred effectively.

(b) A determination that military recruiting personnel are barred by policy from the premises of an institution shall be made when military personnel cannot obtain permission to recruit on the premises of the institution. This includes circumstances in which policy of the institution is applied to bar military recruiting personnel because of the policies or practices of the Department of Defense, including the policies or practices of a DOD Component. A determination that military recruiting personnel are barred by policy will not be made when the institution:

(1) Excludes all employers from recruiting on the premises of the institution.

(2) Permits employers to recruit on the premises of the institution only in response to an expression of student interest, and the institution:

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers.

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are apliable to other employers.

(3) Has been unable to schedule military recruiting visits in the past academic year, but agrees to schedule military recruiting visits on the premises of the institution in the coming academic year.

---

[4] Although this resolution has been placed in the Statutes at Large as Pub. L. 90-331, 82 Stat. 170, it has not been codified; it is set out in the notes to 18 U.S.C. 3056.

(4) Otherwise establishes reasonable restrictions on the time and place of recruiting activities that generally are applicable to all employers and are not based on the policies or practices of the Department of Defense.

(c) Under Pub. L. 92-436, the prohibition on use of funds may be waived if the Secretary of the Military Department concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and frurnishes to the Congress the reasons why such a course of instruction is of vital importance to the security of the United States.

(d) Under Pub. L. 92-436, the prohibition on use of research and development (R&D) fund may be waived if the Secretary of Defense, or designee, determines that the expenditure is a continuation or a renewal of a previous program with the institution that is likely to make significant contribution to the defense effort.

§ 216.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Installations, and Logistics)* (ASD(MI&L)) shall:

(1) Determine whether recruiting personnel have been barred by policy from the premises of an institution of higher learning.

(2) Disseminate to DOD Components the names of institutions of higher learning that are subject to the prohibition on use of funds.

(b) The *Under Secretary of Defense for Research and Engineering* (USDR&E) shall exercise the authority to waive the prohibition on use of R&D funds under § 216.3(d), of this part. Such waivers shall be reported promptly to the ASD(MI&L).

(c) The *Secretaries of the Military Departments* shall:

(1) Submit semiannual reports to the ASD(MI&L) under § 216.6(a), of this part, concerning institutions of higher learning that bar recruiting personnel from the premises of the institutions.

(2) Determine whether to waive the prohibition on use of funds under § 216.3(c), of this part.

(d) The *Heads of DOD Components* shall submit semiannual reports on actions related to the prohibition on use of funds under § 216.6(b), of this part.

§ 216.5 Procedures.

(a) Recruiters shall continue to observe the traditional DOD policy to accommodate an institution's preferences as to times and places for scheduling oncampus recruiting.

(b) The procedures prescribed herein shall be applied to institutions of higher learning that are visited for recruiting purposes. A survey of institutions of higher learning may not be undertaken for purposes of this part. Action taken under the part shall be limited to experiences obtained as a result of attempts to schedule or conduct normal recruiting visits and on any further information related to such recruiting endeavors.

(c) The following procedures shall be used by the Military Departments to determine whether recruiting personnel are barred by policy from the premises of an institution of higher learning.

(1) An inquiry as to the policy of the institution concerning military recruiting shall be made when an official of the institution informs the Military Service concerned, orally or in writing, that the policy of the institution is not to permit recruiting by the Military Service, or when repeated requests to schedule recruiting visits are unsuccessful. An inquiry need not be made when the Military Service concerned otherwise has determined that recruiting personnel are not barred by policy under one or more provisions of § 216.3(b)(1) through § 216.3(b)(4), of this part.

(2) The inquiry shall consist solely of official contact with officers of the institution who are responsible for recruiting or placement activities, or their superiors.

(3) The Military Service shall obtain written confirmation of the refusal to permit recruiting by the Military Service. If written confirmation cannot be obtained, oral policy statements attributed to an appropriate official of the institution shall be used.

(4) Based upon the initial inquiry, written clarification of the institution's present policy shall be sought

by a letter of inquiry to the head of the institution from the headquarters level of the military recruiting organization concerned (or higher official if so designated by the Secretary of the Military Department concerned). The sample letter of inquiry at Appendix A shall be followed as closely as possible.

(5) Under the procedures established by the Secretary of the Military Department concerned, a determination shall be made whether military recruiting personnel are being barred by the policy of the institution from the premises of the institution. The determination shall be based on the responses to the letter of inquiry and on such other evidence obtained in accordance with this part as may be appropriate, consistent with the policy in § 216.3, of the part.

(6) If it is determined that one or more of the provisions of § 216.3(b)(1) through § 216.3(b)(4), of this part, are applicable, the actions shall be terminated.

(7) The Secretary of the Military Department concerned shall submit a report for each Military Service to the ASD(MI&L) and the USDR&E each January 31 and June 30 (see § 216.6, of this part).

(i) The report shall list each institution of higher learning that is recommended for inclusion on the list of institutions subject to the prohibition on use of funds. Full documentation, including the basis for the listing, shall be furnished for each institution named, including the institution's formal response to the letter of inquiry.

(ii) Repetitive listing of institutions subject to the prohibition at the time of the report is not required.

(iii) Each institution that has been granted a waiver by the Secretary of the Military Department concerned under § 216.3(c), of this part, shall be listed in a separate portion of the report. A copy of the transmittal to Congress shall be included.

(d) The USDR&E shall inform the ASD(MI&L) promptly when the waiver provisions are invoked for R&D funds under § 216.3(d), of this part, with respect to any institution listed on a Military Department's report. Negative reports from the USDR&E are not required.

(e) Not later than 30 days after receipt of the reports from the Military Departments, the ASD(MI&L) shall provide each institution listed by the Military Departments under § 216.5(c)(7)(i), of this part, with the following information:

(1) The portions of each Military Department's report that pertain to the institution, including the supporting documentation.

(2) Notice that the prohibition on use of funds under Pub. L. 92-436 and this part shall be invoked within 60 days of the date of the letter unless the institution provides sufficient information to enable the ASD(MI&L) to determine that the institution will permit recruiting by the Military Services during the coming academic year or that one or more of the provisions of § 216.3, of this part, are otherwise applicable. A reasonable extension of time, not to exceed 30 days, may be granted at the request of the institution.

(3) Notice that communications concerning the waiver provisions based upon the availability of a specific course of instruction (§ 216.3(c), of this part) or expenditure of R&D funds (§ 216.3(d), of this part) shall be submitted to the ASD(MI&L) for transmittal to the appropriate official.

(f) When the response of the institution has been received, or if no response is received by the suspense date, the ASD(MI&L) shall determine whether the institution shall be prohibited from receiving funds as provided in § 216.3, of this part. The determination shall be transmitted promptly to the institution and to all DOD Components. If the USDR&E has invoked the waiver provisions with respect to R&D funds under § 216.3(d), of this part, that fact shall be noted. If the prohibition on use of funds extends only to subordinate elements of an institution, only those elements that are subject to the prohibition shall be listed.

(g) On a semiannual basis, but not later than November 30 and April 30 of each year, the ASD(MI&L) shall transmit to the heads of DOD Components a cumulative list of all institutions currently subject to the prohibition on use of funds under § 216.3 of this part.

(1) An institution may be removed from the list under the following circumstances:

(i) When an institution provides information to the ASD(MI&L) to permit a determination that the institution is willing to schedule recruiting by the Military Services on the premises of the institution in the coming academic year, or that one or more of the provisions of § 216.3(b)(1) through § 216.3(b)(4), of this part, are otherwise applicable.

(ii) When the Secretary of a Military Department invokes the waiver provisions of § 216.3(c), of this part.

(2) If the USDR&E invokes the waiver provisions of § 216.3(d), of this part, to permit the use of R&D funds at an institution on the list, that fact shall be noted, but the institution may not be removed from the list solely on that basis.

(3) An institution may be added to the list only in accordance with this paragraph. If the Secretary of a Military Department proposes to withdraw a waiver previously granted under § 216.3(c), of this part, the Secretary shall notify the institution of that fact and shall initiate an inquiry under this section to determine whether the institution intends to continue barring military recruiters by policy from the premises of the institution. If it is determined that such a bar is in effect, the matter shall be processed by the Military Department Secretary and the ASD(MI&L) under this paragraph.

§ 216.6 Information requirements.

(a) The semiannual reports from the Secretaries of the Military Departments as to the recommendations of institutions for inclusion on the list of institutions prohibited from receiving funds shall be submitted on January 31 and June 30 of each year. This reporting requirement has been assigned Report Control Symbol DD-MIL(SA)1386.

(b) On January 31 and June 30 of each year, the heads of DOD Components shall submit a list of all actions in which an institution listed by the ASD (MI&L) under §§ 216.5(f) and 216.5(g), of this part, has been subjected to a termination of funding or other disqualification from eligibility to receive funds on the basis of this part. This reporting requirement has been assigned Report Control Symbol DD-MIL(SA)1640.

APPENDIX A—SAMPLE LETTER OF INQUIRY

Dr. John Doe
President
(name of institution)
Washington, D.C.

Dear Mr. Doe: My understanding is that military recruiting personnel are barred from the premises of *(name of institution)* by the policies of the institution. DoD Directive 1322.13 published in the Code of Federal Regulations under title 32, Part 216, obligates me to inform you of the law regarding policies that bar military recruiting personnel from the premises of institutions of higher learning. Moreover, I am required by the DoD Directive 1322.13—and also would like personally—to provide you the opportunity to clarify your institution's policy since DoD funding for programs at your institution may be at stake.

Section 606 of Public Law 92-436 (the Department of Defense Authorization Act for 1973) prohibits use of DoD appropriations at any institution of higher learning that by policy bars military recruiting personnel from the premises of the institution. It further provides that the Secretaries of the Military Departments shall furnish the Secretary of Defense the names of any institutions of higher learning that the Secretaries determine are barring military recruiting personnel from the institution's premises or property.

Funds for tuition assistance and for research, development, test, and evaluation for the Armed Forces are included in this Act. The applicable section of Pub. L. 92-436 is attached for your information.

So that the *(Military Service recruiting organization)* can provide authoritative information for use in complying with the requirements of this law, I would appreciate clarification of the current policy of your institution concerning on campus military recruiting. (Recite information previously received concerning the institution's policy or intentions in regard to on campus recruiting, record of unsuccessful efforts to schedule recruiting visits, and other facts or points of departure, as appropriate.)

Specifically, I would appreciate answers to the following questions:

Is it the present policy of (*name of institution*) to bar military recruiting personnel from its premises or property?

Does (*name of institution*) intend to permit military recruiting on campus in the near future and is not able to schedule a date for a recruiting visit?

What is the policy of (*name of institution*) with respect to the visits of civilian employers (public or private) to the campus for the purpose of recruiting college students?

To comply with the reporting requirements of the law, I should appreciate your response by (*date*). I am hopeful that it will be possible for the (*Military Service*) to schedule a recruiting visit in the near future at a mutually agreed upon time and place.

If you have any questions regarding this matter, please call me at (*phone number*).

Sincerely,

PART 217—RECREATIONAL USE OF OFF-ROAD VEHICLES ON DoD LANDS

Sec.
217.1 Reissuance and purpose.
217.2 Applicability and scope.
217.3 Definitions.
217.4 Policy.
217.5 Responsibilities.
217.6 Protection of natural resources and environmental values.

ENCLOSURE—GUIDELINES AND CRITERIA TO EVALUATE DoD LANDS FOR RECREATIONAL OFF-ROAD VEHICLE USE

AUTHORITY: E.O. 11644 (1972) as amended by E.O. 11989 (1977), 18 U.S.C. 1382 (1976), and 16 U.S.C. 460(1).

SOURCE: 44 FR 30336, May 25, 1979, unless otherwise noted.

§ 217.1 Reissuance and purpose.

This part (a) updates established policies, procedures, and criteria for controlling recreational use of off-road vehicles, and (b) prescribe appropriate operating conditions for such vehicles in accordance with E.O. 11644, "Use of Off-road vehicles on the Public Lands" (1972) as amended by E.O. 11989 (1977).

§ 217.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The Corps of Engineers may prescribe separate regulations.

(b) Its provisions do not apply to the official use of vehicles.

§ 217.3 Definitions.

(a) *Off-road vehicles.* Any motorized vehicle designated for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain. The term excludes any (1) registered motorboat, (2) military, fire, ambulance, or law enforcement vehicle when used for emergency purposes, (3) combat or combat support vehicle when used for national defense purposes, and (4) official use vehicle.

(b) *Official use.* The use of a vehicle by an employee, agent, or designated representative of the Department of Defense or one of its contractors in the course of employment or agency representation.

§ 217.4 Policy.

(a) It is Department of Defense policy to protect and enhance environmental quality, conserve natural resources, and provide opportunities for outdoor recreation (Pub. L. 88-29, "Outdoor Recreation Programs" (16 U.S.C. 460(1), and DoD Directive 4700.1,[1] "Natural Resources—Conservation and Management," November 6, 1978). Land under DoD control was acquired solely for national defense purposes; other uses are secondary to mission needs.

(b) All land and water areas will be closed to recreational off-road travel except those areas and trails that are suitable and specifically designated for such use.

§ 217.5 Responsibilities.

Consistent with the provisions of this part regarding off-road vehicles, DoD Components with land management responsibilities shall:

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

(a) Prescribe operating conditions to protect resource values, preserve public health, safety and welfare, and minimize use conflicts. These conditions shall include provisions for registration permits, use fees, and liability insurance requirements for users.

(b) Ensure that lands where off-road vehicle use is permitted are identified in the natural resources management plan and are included as part of the installation's master plan.

(c) Provide opportunities for users to participate in the selection and designation of suitable sites. Distribute information which identifies permitted sites and describes the conditions of use.

(d) Mark permitted areas and trails.

(e) Manage trails and areas to ensure that conditions of use are met on a continuing basis.

(f) Monitor the effects of the use of off-road vehicles. This monitoring shall be the basis for changes to: (1) Installation or DoD Component regulations to ensure adequate control of off-road vehicle use; (2) area and trail designations; or (3) conditions of use which are necessary to protect the environment, ensure the public safety, and minimize conflict among users.

(g) Negotiate cooperative agreements with State or local governments for the enforcement of laws and regulations relating to off-road vehicle use.

§ 217.6 Protection of natural resources and environmental values.

(a) When the recreational use of off-road vehicles is permitted, the intensity, timing, and distribution will be carefully regulated to protect environmental values. In designating suitable sites, preference will be given to utilizing existing trails. Before designating areas or trails for such use, the environmental consequences will be assessed. Environmental statements will be prepared when assessments indicate that the proposed use will create a significant environmental impact (DoD Directive 6050.1,[1] "Environmental Considerations in DoD Actions," March 19, 1974.

(b) Evaluate each type of off-road vehicle separately to determine the suitability of areas and trails for off-road vehicle use. The impact of one type of off-road vehicle shall not affect or govern regulations on the use of an area or trail by another type of off-road vehicle except where their impacts may be cumulative.

(c) Persons abusing the off-road vehicle use privilege shall be barred from access to the DoD installation for off-road vehicle use. Further action may be taken under 18 U.S.C. 1382, "Entering Military, Naval or Coast Guard Property" (1976).

(d) If the installation commander determines that off-road vehicle use is causing or will cause considerable adverse effects to the soil, vegatation, wildlife, wildlife habitat, or cultural or historic resources, immediate action shall be taken to prohibit the type of use causing such effects, and if necessary, to close such designated sites.

(e) Restrictions on off-road vehicle use or closure of designated sites shall remain in effect until the adverse effects have been eliminated, including site restoration, if necessary, and measures have been taken to prevent any such recurrence.

Enclosure—Guidelines and Criteria to Evaluate DoD Lands for Recreational Off-Road Vehicle Use

A. *Site Identification*

1. DoD lands may be designated for off-road vehicle use provided that (a) there is sufficient suitable area, (b) a clear and demonstrated need exists, (c) other public lands that are more suitable are not available, and (d) the area is not an excepted area described below.

2. *Excepted areas* are:

a. Areas that are restricted for security or safety purposes.

b. Areas containing geological and soil conditions, flora or fauna, or other natural characteristics of a fragile or unique nature that would be subject to excessive damage by use of off-road vehicles.

c. Areas that are key fish and wildlife habitat as identified under environmental considerations (subsection C.5. of this enclosure).

d. Areas that contain archeological, historical or paleontological resources or that constitute actual wilderness or scenic areas.

e. Areas in which noise would affect adversely other users and wildlife resources.

---

[1] See footnote 1 on previous page.

3. *Site Designations.* Before designating sites, determine the carrying capacity of the area. Sites may be designated as:

a. *Area Designation.* For users, an area designation offers greater freedom of movement and is preferred over a trail designation. Area designation, however, may result in greater environmental damage and could cause conflicts with other uses. Care must be exercised in designating sites for area use.

b. *Trail Designation.* Designation of specific trails for off-road use by off-road vehicles constitutes a compromise for most off-road vehicle users, and is more compatible with the objective of this Directive. Therefore, where it is practicable to designate existing or proposed trails for use of off-road vehicles, preference should be given to this type of site designation.

c. *Use Classification.* Classify areas or trails as (1) generally open to the public with access controlled within manageable quotas, or (2) closed to the public. Where use by installation personnel is permitted, exclusions of the public may not be justifiable, except under the most compelling conditions.

B. *Zones of Use*

Locate areas and trails to minimize:

1. Damage to soil, watershed, vegetation or other resources of the public lands.

2. Harassment of wildlife or disruption of wildlife habitats.

3. Conflicts between off-road vehicle use and other recreational uses of the same or neighboring lands.

C. *Environmental Considerations*

The environmental impacts of off-road vehicle use will be assessed, and when such use will create significant environmental impacts, an environmental impact statement will be prepared in accordance with DoD Directive 6050.1.[1] Some factors to consider are the effects of:

1. Dust and exhaust emissions on air quality.

2. Siltation on streams or other bodies of water which may result from soil erosion created by off-road vehicles.

3. Soil erodability and soil compaction.

4. Off-road vehicle use on native and desirable species of plants with special consideration given to endangered species.

5. Off-road vehicle use on wildlife, their breeding and drumming grounds, winter feeding and yarding area, migration routes, and nesting areas. The effects of such use on the spawning, migration and feeding habits of fish and other aquatic organisms should also be considered. Particular attention should be given to the effects on species classified as rare or endangered.

6. Excessive noise.

7. Off-road vehicles on aesthetic values and visual characteristics of the sites.

D. *Operating Criteria*

1. Off-road vehicles shall not be operated:

a. In a reckless, careless, or negligent manner.

b. In excess of established speed limits.

c. While the operator is under the influence of alcohol or drugs.

d. In a manner likely to cause excessive damage or disturbance of the land, wildlife, or vegetative resources.

2. All off-road vehicles must conform to all applicable local and State laws, including those pertaining to pollutant emissions, noise, and registration requirements.

PART 218—GUIDANCE FOR THE DETERMINATION AND REPORTING OF NUCLEAR RADIATION DOSE FOR DOD PARTICIPANTS IN THE ATMOSPHERIC NUCLEAR TEST PROGRAM (1945–1962)

Sec.
218.1 Policies.
218.2 General procedures.
218.3 Dose reconstruction methodology.
218.4 Dose estimate reporting standards.

AUTHORITY: Pub. L. 98-542, 98 Stat. 2725 (38 U.S.C. 354 Note.)

SOURCE: 50 FR 42521, Oct. 21, 1985, unless otherwise noted.

§ 218.1 Policies.

(a) Upon request by the Veterans Administration in connection with a claim for compensation, or by a veteran or his or her representative, available information shall be provided by the applicable Military Service which shall include all material aspects of the radiation environment to which the veteran was exposed and shall include inhaled, ingested and neutron doses. In determining the veteran's dose, initial neutron, initial gamma, residual gamma, and internal (inhaled and ingested) alpha, beta, and gamma shall be considered. However, doses will be reported as gamma dose, neutron dose, and internal dose. The minimum standards for reporting dose estimates are set forth in § 218.4.

(b) The basic means by which to measure dose from exposure to ionizing radiation is the film badge. Of the estimated 220,000 Department of Defense participants in atmospheric nuclear weapons tests, about 145,000 have film badge dose data available. The information contained in the records has been reproduced in a standard format and is being provided to each military service, which can use the film badge dose data to obtain a radiation dose for a particular individual from that service. This is done upon request from the individual, the individual's representative, the Veterans Administration, or others as authorized by the Privacy Act. Upon request, the participant or his or her authorized representative will be informed of the specific methodologies and assumptions employed in estimating his or her dose. The participant can use this information to obtain independent options regarding exposure.

---

[1] See footnote to § 217.4.

(c) From 1945 through 1954, the DoD and Atomic Energy Commission (AEC) policy was to issue badges only to a portion of the personnel in a homogeneous unit such as a platoon of a battalion combat team, Naval ship or aircraft crew. Either one person was badged in a group performing the same function, or only personnel expected to be exposed to radiation were badged. After 1954, the policy was to badge all personnel. But, some badges were unreadable and some records were lost or destroyed, as in the fire at the Federal Records Center in St. Louis. For these reasons the Nuclear Test Personnel Review (NTPR) Program has focused on determining the radiation dose for those personnel (about 75,000) who were not issued film badges or for whom film badge records are not available.

(d) In order to determine the radiation dose to individuals for whom film badge data are not available, alternative approaches are used as circumstances warrant. All approaches require investigation of individual or group activities and their relationship to the radiological environment. First, if it is apparent that personnel were not present in the radiological environment and had no other potential for exposure, then their dose is zero. Second, if some members of a group had film badge readings and others did not—and if all members had a common relationship with the radiological enviroment—then doses for unbadged personnel can be calculated. Third, where sufficient badge readings or a common relationship to the radiological environment does not exist, dose reconstruction is performed. This involves correlating a unit's or individual's detailed activities with the quantitively determined radiological environment. The three approaches are described as follows:

(1) Activities of an individual or his unit are researched for the period of participation in an atmospheric nuclear test. Unit locations and movements are related to areas of radiation. If personnel were far distant from the nuclear detonation(s), did not experience fallout or enter a fallout area, and did not come in contact with radioactive samples or contaminated objects, they were judged to have received no dose.

(2) Film badge data from badged personnel may be used to estimate individual doses for unbadged personnel. First, a group of participants must be identified that have certain common characteristics and a similar potential for exposure to radiation. Such characteristics are: Individuals must be doing the same kind of work, referred to as activity, and all members of the group must have a common relationship to the radiological environment in terms of time, location or other factors. Identification of these groups is based upon research of historical records, technical reports or correspondence. A military unit may consist of several groups or several units may comprise a single group. Using proven statistical methods, the badge data for each group is examined to determine if it adequately reflects the entire group, is valid for use in statistical calculations, or if the badge data indicate the group should be sub-divided into smaller groups. For a group that mets the tests described above, the mean dose, variance and confidence limits are determined. An estimated dose equal to 95% probability that the actual exposure did not exceed the estimate is assigned to unbadged personnel. This procedure is statistically sound and will insure that unbadged personnel are assigned doses much higher than the average/mean for the group.

(3) Dose reconstruction is performed if film badge data are unavailable for all or part of the period or radiation exposure, if film badge data are partially available but cannot be used statistically for calculations, special activities are indicated for specific individuals, or if other types of radiation exposures are indicated. In dose reconstruction, the conditions of exposure are reconstructed analytically to arrive at a radiation dose. Such reconstruction is not a new concept; it is standard scientific practice used by health physicists when the circumstances of a radiation exposure require investigation. The underlying method is in each case the same. The radiation environment is characterized in time and space, as are the activities and geometrical position of the individual. Thus, the rate at which radiation is accrued is determined throughout the time of exposure, from which the total dose is integrated. An uncertainty analysis of the reconstruction provides a calculated mean dose with confidence limits. The specific method used in a dose reconstruction depends on what type of data are available to provide the required characterizations as well as the nature of the radiation environment. The radiation environment is not limited to the gamma radiation that would have been measured by a film badge, but also includes neutron radiation for personnel sufficiently close to a nuclear detonation, as well as beta and alpha radiation (internally) for personnel whose activities indicate the possibility of inhalation or ingestion of radioactive particles.

§ 218.2 General procedures.

The following procedures govern the approach taken in dose determination:

(a) Use individual film badge data where available and complete, for determining the external gamma dose.

(b) Identify group activities and locations for period(s) of possible exposure.

(c) Qualitatively assess the radiation environment in order to delineate contaminated areas. If no activities occurred in these areas, and if no other potential for exposure exists, a no dose received estimate is made.

(d) If partial film badge data are available, define group(s) of personnel with common activities and relationships to radiation environment.

(e) Using standard statistical methods, verify from the distribution of film badge readings whether the badged sample adequately represents the intended group.

(f) Calculate the mean external gamma dose, with variance and confidence limits, for each unbadged population. Assign a dose equal to 95% probability that actual exposure did not exceed the assigned dose.

(g) If badge data is not available for a statistical calculation, conduct a dose reconstruction.

(h) For dose reconstruction, define radiation environment through use of all available scientific data, e.g., measurements of radiation intensity, decay, radioisotopic composition.

(i) Quantitatively relate activities shielding, position, and other factors to radiation environment as a function of time. Integrate dose throughout period of exposure.

(j) Where possible, calculate mean dose with confidence limits; otherwise calculate best estimate dose or, if data are too sparse, upper limit dose.

(k) Compare calculations with available film badge records to verify the calculated doses. Whether or not film badge data is available, calculate initial and internal doses where identified as a meaningful contribution to the total dose.

§ 218.3 Dose reconstruction methodology.

(a) *Concept.* The specific methodology consists of the characterization of the radiation environments to which participants through all relevant activities, were exposed. The environments, both initial and residual radiation are corrected with the activities of participants to determine accrued doses due to initial radiation, residual radiation and/or inhaled/ingested radioactive material, as warranted by the radiation environment and the specific personnel activities. Due to the range of activities, times, geometries, shielding, and weapon characteristics, as well as the normal spread in the available data pertaining to the ra-

BEST COPY AVAILABLE

diation environment, an uncertainty analysis is performed. This analysis quantifies the uncertainties due to time/space variations, group size, and available data. Due to the large amounts of data, an automated (computer-assisted) procedure is often used to facilitate the data-handling and the dose integration, and to investigate the sensitivity to variations in the parameters used. The results of the gamma data calculations are then compared with film badge data as they apply to the specific period of the film badges and to the comparable activities of the exposed personnel, in order to validate the procedure and to identify personnel activities that could have led to atypical doses. Radiation dose from neutrons and dose commitments due to inhaled or ingested radioactive material are not detected by film badges. Where required, these values are calculated and recorded separately.

(b) *Characterization of the radiological environment.* (1) This step describes and defines the radiological conditions as a function of time for all locations of concern, that is, where personnel were positioned or where personnel activities took place. The radiation environment is divided into two standard categories—initial radiation and residual radiation.

(2) The initial radiation environment results from several types of gamma and neutron emissions. Prompt neutron and gamma radiation are emitted at the time of detonation, while delayed neutrons and fission-product gamma, from the decay of radioactive products in the fireball, continue to be emitted as the fireball rises. In contrast to these essentially point sources of radiation, there is gamma radiation from neutron interactions with air and soil, generated within a fraction of a second. Because of the complexity of these radiation sources and their varied interaction properties with air and soil, it is necessary to obtain solutions of the Boltzmann radiation transport equation. The radiation environment thus derived includes the effects of shot-specific parameters such as weapon type and yield, neutron and gamma output, source and target geometry, and atmospheric conditions. The calculated neutron and gamma radiation environments are checked for consistency with existing measured data as available. In those few cases displaying significant discrepancies that cannot be resolved, an environment based on extrapolation of the data is used if it leads to a larger calculated dose.

(3) In determining the residual radiation environment, all possible sources are considered including radioactive clouds, radiation that may have been encountered from other tests, and radioactive debris that may have been deposited in water during oceanic tests. The residual radiation environment is divided into two general components—neutron-activated material that subsequently emits, over a period of time, beta and gamma radiation; and radioactive debris from the fission reaction or from unfissioned materials that emit alpha, beta, and gamma radiation. Because residual radiation decays, the characterization of the residual environment is defined by the radiation intensity as a function of type and time. Radiological survey data are used to determine specific intensities at times of personnel exposure. Interpolation and extrapolation are based on known decay characteristics of the individual materials that comprise the residual contamination. In those rare cases where insufficient radiation data exist to adequately define the residual environment, source data are obtained from the appropriate weapon design laboratory and applied in standard radiation transport codes to determine the initial radiation at specific distances from the burst. This radiation, together with material composition and characteristics, leads to description of the neutron-activated field for each location and time of interest. In all cases observed data, as obtained at the time of the operation, are used to calibrate the calculations.

(c) *Activities of participants.* This step uses all official records, augmented by personnel interviews where gaps exist, to depict a scenario of activities for each individual or definable group. When a dose reconstruction is performed for a specific individual, information available from the individual is

BEST COPY AVAILABLE

accepted unless demonstrably inaccurate. For military units, whose operations were closely controlled and further constrained by radiological safety monitors, the scenario is usually well defined. The same is true for observers, who were restricted to specific locations both during and after the nuclear burst. Ships' locations and activities are usually known with a high degree of precision from deck logs. Aircraft tracks and altitudes are also usually well defined. Personnel engaged in scientific experiments often kept logs of their activities; moreover, the locations of their experiments are usually a matter of record. Where the records are insufficiently complete for the degree of precision required to determine radiation exposure, participants' comments are used and reasonable judgements are made to further the analysis. Possible variations in the activities, as well as possible individual deviations from group activities, with respect to both time and location, are considered in the uncertainty analysis of the radiation dose calculations.

(d) *Calculation of dose.* (1) The initial radiation doses to close-in personnel (who were normally positioned in trenches at the time of detonation) are calculated from the above-ground environment by simulating the radiation transport into the trenches. Various calculational approaches, standard in health physics, are employed to relate in-trench to above-trench doses for each source of radiation. Detailed modeling of the human body, in appropriate postures in the trench, is performed to calculate the gamma dose that would have been recorded on a film badge and the maximum neutron dose. The neutron, neutron-generated gamma, and prompt gamma doses are accrued during such a short time interval that the posture in a trench could not be altered significantly during this exposure. The fission-product gamma dose, however, is delivered over a period of many seconds. Therefore, the possibility of individual reorientation (e.g., standing up) in the trench is considered.

(2) The calculation of the dose from residual radiation follows from the characterized radiation environment and personnel activities. Because radiation intensities are calculated for a field (i.e., in two spatial dimensions) and in time, the radiation intensity is determinable for each increment of personnel activity regardless of direction or at what time. The dose from exposure to a radiation field is obtained by summing the contribution (product of intensity and time) to dose at each step. The dose calculated from the radiation field does not reflect the shielding of the film badge afforded by the human body. This shielding has been determined for pertinent body positions by the solution of radiation transport equations as applied to a radiation field. Conversion factors are used to arrive at a calculated film badge dose, which not only facilitates comparison with film badge data, but serves as a substitute for an unavailable film badge reading.

(3) The calculation of the dose from inhaled or ingested radioactivity primarily involves the determination of what radiosotopes entered the body in what quantity. Published conversion factors are then applied to these data to arrive at the radiation dose and future dose commitments to internal organs. Inhalation or ingestion of radioactive material is calculated from the radioactive environment and the processes of making these materials inhalable or ingestible. Activities and processes that cause material to become airborne (such as wind, decontamination or traffic) are used with empirical data on particle lofting to determine airborne concentrations under specific circumstances. Volumetric breathing rates and durations of exposure are used to calculate the total material intake. Data on time-dependent weapon debris isotopic composition and the above-mentioned conversion factors are used to calculate the dose commitment to the body and to specific body organs.

(e) *Uncertainty analysis.* Because of the uncertainties associated with the radiological data or calculations used in the absence of data, as well as the uncertainties with respect to personnel activities, confidence limits are determined where possible for group dose calculations. The uncertainty analysis quantifies the errors in available data or in the model used in the absence of data. Confidence limits are based on the uncertainty of all relevant input parameters, and thus vary with the quality of the input data. They also consider the possible range of doses due to the size of the exposure group being examined. Typical sources of error include orientation of the weapons, specific weapon yields, instrument error, fallout intensity data, time(s) at which data were obtained, fallout decay rate, route of personnel movements, and arrival/stay times for specific activities.

(f) *Comparison with film badge records.* (1) Calculations of gamma dose were compared with film badge records for two military units at Operation PLUMBBOB to initially validate this methodology. Where all parameters relating to radiation exposure were identified, direct comparison of gamma dose calculations with actual film badge readings was possible. Resultant correlations provided high confidence in the methodology.

(2) Film badge data may, in some cases, be unrepresentative of the total exposure of a given individual or group; nevertheless, they are extremely useful for direct comparison of incremental doses for specific periods, e.g., validating the calculations for the remaining, unbadged period of exposure. Moreover, a wide distribution of film badge data often leads to more definitive personnel grouping for dose calculations and to further investigation of the reason(s) for such distribution. In all cases, personnel film badge data are not used in the dose calculations, but rather are used solely for comparison with and validation of the calculations. For dose reconstructions accomplished to date, comparison has been favorable and within the confidence limits of the calculations.

§ 218.4 Dose estimate reporting standards.

The following minimum standards for reporting dose estimates shall be uniformly applied by the Military Services when preparing information in response to an inquiry by the Veterans Administration, in connection with a claim for compensation, or by a veteran or his or her representative. The information shall include all material aspects of the radiation environment to which the veteran was exposed and shall include inhaled, ingested, and neutron doses, when applicable. In determining the veteran's dose, initial neutron, initial gamma, residual gamma, and internal (inhaled and ingested) alpha, beta, and gamma shall be considered. However, doses will be reported as gamma dose, neutron dose, and internal dose. To the extent to which the information is available, the responses will address the following questions:

(a) Can it be documented that the veteran was a test participant? If so, what tests did he attend and what were the specifics of these tests (date, time, yield (unless classified) type, location and other relevant details)?

(b) What unit was the man in? What were the mission and activities of the units at the test?

(c) To the extent to which the available records indicate, what were his duties at the test?

(d) Can you corroborate the specific information relevant to the potential exposure provided by the claimant to the Veterans Administration and forwarded to the Department of Defense? What is the impact of these specific activities on the claimant's reconstructed dose?

(e) Is there any recorded radiation exposure for the individual? Does this recorded exposure cover the full period of test participation? What are the uncertainties associated with the recorded film badge dose?

(f) If recorded dosimetry data is unavailable or incomplete, what is the dose reconstruction for the most probable dose, with error limits, if available?

(g) Is there evidence of a neutron or internal exposure? What is the reconstruction?

Upon, request, the participant or his or her authorized representative will be informed of the specific methodologies and assumptions employed in estimating his or her dose.

PART 219—PROTECTION OF HUMAN SUBJECTS IN DOD-SUPPORTED RESEARCH

Sec.

219.1 Purpose.
219.2 Applicability and scope.
219.3 Definition.
219.4 Policy.
219.5 Responsibilities.
219.6 Procedures.
219.7 Information requirements.

AUTHORITY: 5 U.S.C. 301, sec. 474(a).

SOURCE: 48 FR 35400, Aug. 4, 1983, unless otherwise noted.

§ 219.1 Purpose.

This rule, under 45 CFR Part 46 and 21 CFR Parts 1-82, 300-460, and 800-895 establishes policy; assigns responsibilities; and specifies authority for protecting the rights and welfare of humans used as subjects of study in DoD-supported research, development, test, and evaluation (RDT&E) and clinical investigation activities (hereafter referred to as "research").

§ 219.2 Applicability and scope.

(a) This rule applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies, and the Uniformed Services University of the Health Sciences (USUHS) (hereafter referred to as "DoD Components") and to contractor or grantee activities supported by the Department of Defense.

(b) Its provisions encompass the following:

(1) Clinical investigations as established by DoD Directive 6000.4, biomedical research, and behavioral studies.

(2) RDT&E involving new drugs, vaccines, biologicals, or investigational medical devices.

(3) Inclusion of human subjects, whether as the direct object of research or as the indirect object of research involving more than minimal risk in the development and testing of military weapon systems, vehicles, aircraft, and other materiel. The determination of whether a research protocol involves more than minimal risk shall be made by review committees established in accordance with § 219.6, below. Nothing in this rule is intended to supersede requirements for health hazard or other safety reviews required by other DoD issuances or other DoD Component regulations.

(c) Its provisions do not apply to epidemiological surveys that are of no more than minimal risk as set forth in the human protection regulations issued by the Department of Health and Human Services (45 CFR Part 46).

(d) Nothing in this rule is intended to limit the authority of a health care practitioner to provide emergency medical care under applicable law of the jurisdiction in which the care is provided or of commanders in the discharge of assigned duties or responsibilities.

§ 219.3 Definitions.

Terms used in this rule are as defined in 45 CFR Part 46 except for the following:

(a) *Human Subject.* A living individual about whom an investigator conducting research obtains data through interaction with the individual, including both physical procedures and manipulations of the subject or the subject's environment. The term does not include military or civilian personnel who are qualified to test by assignment to duties that call specifically for such qualifications such as test pilots and test engineers.

(b) *Non-U.S. Citizens.* Foreign nationals, excluding, for the purposes of this rule, personnel on active duty.

(c) *Research.* A systematic investigation as described in § 219.2(b) (1), (2) and (3), above, that is designed to develop or contribute to generalizable knowledge. The term does not include individual or group training of military personnel such as combat readiness, effectiveness, proficiency, or fitness exercises.

§ 219.4 Policy.

(a) It is the policy of the Department of Defense that:

(1) The fundamental rights and welfare of human subjects in research funded by DoD Components shall be protected to the maximum extent possible. This protection is meant to en-

compass basic respect for human dignity and to protect subjects from actual harm. Responsibility for the protection of human subjects is a command responsibility.

(2) Except as provided elsewhere in this rule the human protection regulations issued by the Department of Health and Human Services (45 CFR Part 46) shall apply to research supported by the Department of Defense.

(3) Contractors or grantees (and elements of DoD Components) holding an assurance of compliance with the Human use regulations of the Department of Health and Human Services (45 CFR Part 46) shall be considered in compliance with the terms of this rule. In the absence of such an assurance, a special assurance that meets the minimum requirements of 45 CFR Part 46 shall be negotiated between the contractor or grantee and the DoD Component concerned.

(4) Only persons who are informed fully and voluntarily agree to participate may be used as human subjects in research. The only exception to the policy is that consent to participate may be obtained from a legal representative of the subject when the measures used are intended to be beneficial to the subject.

(i) In research conducted outside the United States involving non-U.S. citizens as human subjects, the laws, customs, and practices of the country in which the research is conducted, or those required by this rule, whichever are more stringent, shall take precedence. The research shall meet the same standards of ethics and safety that apply to research conducted within the United States involving U.S. citizens.

(ii) The use of prisoners of war as human subjects of research is prohibited.

(5) For any research involving human subjects, a medical monitor shall be appointed by name if the approving official determines that the risk is more than minimal.

(b) Requests for exceptions to policy as stated above shall be submitted with full justification to the Under Secretary of Defense for Research and Engineering (USDR&E) by heads of DoD Components.

§ 219.5 Responsibilities.

(a) The *Under Secretary of Defense for Research and Engineering*, or designee, shall:

(1) Develop policies in coordination with the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) to protect human subjects in DoD-funded research.

(2) Coordinate DoD Component activities in the protection of human subjects.

(3) Serve as the point of contact within the Department of Defense and act as the principal DoD liaison with civil or federal agencies outside the Department of Defense on matters pertaining to protection of humans in research.

(4) Serve as the final DoD approval authority for all research involving actual exposure of human subjects to nuclear weapons effect or chemical warfare agents.

(b) The *Assistant Secretary of Defense (Health Affairs)* shall:

(1) Provide policy guidance regarding medical safety and standards of professional medical care and conduct as they relate to the use of humans in research.

(2) Serve as the DoD representative on matters relating to implementation of Food and Drug Administration (FDA) regulatory requirements.

(c) The *Heads of DoD Components*, or designees, shall:

(1) Protect the rights and welfare of human subjects in research sponsored or conducted by or among the members of the respective DoD Components.

(2) When more than one DoD Component is involved, determine primary responsibility based upon consideration of whether the subjects are inpatients or outpatients of a DoD medical treatment facility (MFT); whether the research is conducted in-house or by contract; or whether the prospective human subjects are members of a DoD Component.

(i) When the research, regardless of in-house or contract status, involves use of patients of a DoD MTF, the Component to which the MTF belongs organizationally shall have primary responsibility, except as provided in § 219.5(e).

(ii) For research not involving the use of patients at a DoD MTF, primary responsibility rests as follows:

(A) If the research is done on grant or contract, primary responsibility rests with the DoD Component providing funds.

(B) If the research is conducted in-house, primary responsibility rests with the DoD Component to which the principal investigator is assigned.

(C) If the research is not funded by a DoD Component and there is no DoD principal investigator, primary responsibility rests with the DoD Component to which the prospective human subject is assigned.

(3) Establish procedures to maintain adequate documentation of human subjects used in research, including resulting adverse reactions.

(4) Establish procedures for responding to reports of improper use of human subjects.

(5) Establish review committees as provided for in § 219.6(b), below.

(d) The *Secretaries of the Military Departments* shall approve in-house and contract research involving human subjects, conducted at or funded by a DoD Component for which the Military Department has been designated executive agent. This responsibility includes research that is classified for reasons of national security. When more than one Military Department is involved in the same research, the first review committee to which the research is submitted shall perform the human use review and make recommendations to the Military Department Secretaries concerned. Each Secretary may accept these recommendations or may require additional reviews.

(e) The *President, Uniformed Services University of the Health Sciences,* and the *Director, Defense Nuclear Agency (DNA)*, shall have primary responsibility for research by their respective DoD Components when the research does not also involve patients of a DoD MTF. The President, USUHS, shall have additional responsibility for research conducted in-house or by contract when the research involves patients of a DoD MTF or other U.S. Government health care facility, and USUHS directly funds the research, has received a grant or gift, or has received some other non-DoD form of support for the research. However, in these instances, the MTF review committee shall perform the human use review and make recommendations to the President, USUHS, and to the DoD Component or other U.S. Government institution concerned. The President, USUHS, may accept these recommendations or may require additional reviews.

§ 219.6 Procedures.

(a) *Delegation of Authority.*

(1) The Secretaries of the Military Departments are authorized to delegate all or part of their authority under § 219.5, above, within the military chain of command to the lowest level operating a human-subjects review process.

(2) In addition, the Secretaries of the Military Departments are authorized to make the determination that unique military requirements dictate the use of drugs or devices not officially approved by the FDA. The Secretaries of the Military Departments may delegate this authority to the respective Surgeons General or designees.

(3) The President, USUHS, may delegate the authority specified in § 219.5(e), above, to the Dean or Associate Deans.

(4) Requests for approval of the use of human subjects in research funded by DoD Components other than the Military Departments, DNA, and USUHS shall be submitted to the USDR&E for final determination.

(5) Authority not delegated above to specific officials is retained by the Secretary of Defense.

(b) *Review Committees.* Each official having approval authority for research involving human subjects shall establish one or more committees to provide initial and continuing review of the use of human subjects in such research.

(1) The review committee is similar functionally to the Institutional Review Board (IRB) established under

BEST COPY AVAILABLE

45 CFR Part 46. The IRB performs protocol review and protocol approval. Within the Department of Defense these functions are separated. Review committees exercise only protocol review and recommend approval, modification, or disapproval to an approving authority. Approval authority is vested in the approving official to whom the review committee reports.

(2) The review committee shall be constituted in accordance with 45 CFR Part 46 standards for IRBs and § 219.5(c)(5), above, with the following exceptions:

(i) The prohibition in 45 CFR Part 46 of all-male or all-female membership may be waived by the approving official when compliance is impractical.

(ii) The requirement in 45 CFR Part 46 for a nonaffiliated member may be met by appointment of a member of an institution or organizational unit not subject to the immediate authority of the approving official.

(iii) When the approving authority, or the review committee itself, has reason to believe a given proposal includes more than minimal risk, a physician shall be included as an *ad hoc* member of the committee (see also § 219.4(a)(5), above).

(iv) The approving official may not be a member.

(3) The review committee shall retain records of research reviewed for at least 3 years after the completion of the research, or at the option of the approving official, shall forward records to that official for longer retention.

(4) An approving official may not approve research for which the official is also a principal or coinvestigator. Such research shall be reviewed and approved at a higher echelon of command.

(5) Research that involves the use of human subjects may not be initiated until all necessary approvals and the informed consent of the subjects have been obtained.

(6) If a review committee recommends safeguards or special conditions to a protocol it is recommending for approval, the approving official may not reduce the safeguards or conditions upon approving the protocol. The approving official may require additional safeguards, may disapprove the protocol, or may refer it to a higher approving authority and review committee.

§ 219.7 Information requirements.

The memorandum of understanding between the FDA and the Department of Defense requires that the FDA be informed whenever the use of human subjects in new drug or device research that is classified for reasons of national security has been approved. The FDA also shall be informed when a determination has been made that unique military requirements dictate the use of drugs or devices that have not been approved by the FDA. Such notification also shall be provided to the USDR&E and ASD(HA).

PART 224—DoD COMMITTEE MANAGEMENT PROGRAM

Sec.

224.1 Purpose.
224.2 Applicability.
224.3 Definitions.
224.4 Policy.
224.5 Responsibilities.
224.6 Procedures.
224.7 Information requirements.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 49 FR 31865, Aug. 9, 1984, unless otherwise noted.

§ 224.1 Purpose.

This part implements Title 5, U.S. Code, Appendix I (Pub. L. 92-463, "Federal Advisory Committee Act"), Executive Order 12024, "Advisory Committee Management," December 1, 1977, and General Services Administration (GSA) Interim Regulation, "Federal Advisory Committee Management," April 28, 1983 (41 CFR Part 101-6), and updates policy, responsibilities, and procedures for the DoD Committee Management Program.

§ 224.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense

Agencies (hereafter referred to collectively as "DoD Components").

§ 224.3 Definitions.

Committee. A body of persons with a collective responsibility appointed to consider, investigate, advise, or take action, and usually to report on specific problems or subject areas. The prime characteristic, however, is the corporate or collective responsibility. The term "committee" applies to any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or any subgroup thereof that is established by statute or reorganization plan, established or used by the President, or established or used by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the U.S. Government.

(a) *Advisory Committee.* Any committee that is not composed wholly of full-time officials of the U.S. Government.

(b) *Interagency Committee.* Any committee composed wholly of representatives from two or more U.S. Government agencies.

(c) *International Committee.* Any committee established by formal agreement between the United States and the government of another country or countries or by an international body in which the United States participates.

(d) *Intra-Component Committee.* Any committee composed wholly of representatives from one DoD Component.

(e) *Joint DoD Committee.* Any committee composed wholly of DoD representatives from two or more DoD Components.

(f) *Operational Committee.* One whose primary functions and responsibilities are operational rather than advisory. An operational committee that is not composed wholly of full-time U.S. Government officials may not be established without the express approval of the DoD committee management officer. This approval shall be given only after consultation with the General Counsel, Department of Defense.

§ 224.4 Policy.

(a) Committees may not be established to perform duties, responsibilities, and functions that can be accomplished effectively through command or staff actions.

(b) Committees shall be established to perform such tasks as factfinding, research, special studies, audit, review, and inspections.

(c) Advisory committees may not be established to perform operational, administrative, or management responsibilities, such as administering programs and making determinations, or to effect coordination required in the performance of such responsibilities.

(d) Membership of advisory committees is to be fairly balanced in terms of the points of view represented and the functions to be performed by each advisory committee.

(e) Nothing contained in this Part shall be construed to limit or restrict the free exchange of information, advice, and ideas between representatives of DoD Components or other federal agencies through regular or occasional meetings or other means, as long as such arrangements do not require the issuance of formal charters or terms of reference or the formal designation of membership on a committee.

§ 224.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)), or designee, shall:

(1) Provide policy guidance and prescribe operating procedures for the DoD Committee Management Program to ensure compliance with the requirements of this Part and 5 U.S.C. App I, E.O. 12024, 41 CFR 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(2) Recommend approval or disapproval to the Committee Management Secretariat, GSA, of the establishment or the continuation of DoD advisory committees.

(3) Obtain such information, analyses, reports, and assistance from DoD Components as considered necessary to perform his assigned functions consistent with the policies and criteria of DoD Directive 5000.19.

(4) Maintain liaison with the GSA, Office of Management and Budget (OMB), and other government agencies, as required.

(5) Designate a DoD committee management officer who shall ensure compliance with this part and 5 U.S.C. App I, E.O. 12024, 41 CFR 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(b) The *Heads of DoD Components* shall:

(1) Ensure that the committees under their cognizance comply with the requirements of this part and 5 U.S.C. App I, E.O. 12024, 41 CFR Part 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(2) Provide supplemental guidance as required for the efficient operation of the DoD Committee Management Program.

(3) Manage all aspects, including internal reporting requirements and the approval or disapproval of proposals for the establishment, revision, continuation, or termination of interagency, operational, joint DoD, and intra-Component committees under their cognizance.

(4) Approve or disapprove proposals for participation by their Component on committees chaired by another DoD Component or federal agency.

(5) Submit to the ASD(C) proposals to establish, revise, continue, or terminate all advisory committees under their cognizance.

(6) Maintain information about the program, objectives, and activities of each committee established within their Component (including affiliation and participation) and provide, as required, reports to the ASD(C) on such matters.

(7) Ensure that action is taken to respond to requests submitted under 32 CFR Part 286 requesting information concerning committees.

(8) Provide assistance to the ASD(C) in the review of existing committees and the development of recommendations for revision, consolidation, or termination.

(9) Make a determination, when appropriate, that part or all of an advisory committee meeting shall be closed to the public in accordance with section 10(d) of 5 U.S.C. App. I.

(10) Submit required reports on a timely basis.

(11) Designate a DoD committee management officer to assist in the performance of the above responsibilities, ensuring that he or she is a key management official who is capable of carrying out this program effectively.

§ 224.6 Procedures.

(a) Except when the President determines otherwise for reasons of national security, a notice of each advisory committee meeting shall be published in the FEDERAL REGISTER at least 15 days before the date of the meeting. If an emergency situation arises whereby a notice is to be published in less than 15 days before the meeting is scheduled, such notice may not be published without prior approval of the DoD committee management officer.

(b) The notice shall state the name of the advisory committee, the time, the place, and the purpose of the meeting (including, when possible, a summary of the agenda). The notice also shall state whether the meeting is open or closed to the public. If the meeting is to be closed in whole or in part, the notice shall give the reason and cite the applicable provisions of 5 U.S.C. 552b(c).

(c) Subject to 5 U.S.C. 552b(c), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the federal agency to which the advisory committee reports.

(d) A U.S. Government official shall be designated to chair or attend each meeting of each advisory committee. The official so designated is authorized to adjourn any such meeting whenever he or she determines it to be in the public interest. Advisory committee meetings may not be conducted in the absence of that official.

(e) Detailed minutes of each advisory committee meeting shall be kept and shall contain a record of person present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified by the chairman of the advisory committee.

(f) Advisory committees may not hold any meetings except at the call or with the advance approval of a designated U.S. Government official.

(g) Eight copies of each advisory committee report shall be filed with the Library of Congress.

§ 224.7 Information requirements.

(a) As prescribed in 5 U.S.C. App. I, E.O. 12024, and 41 CFR Part 101-6, annual reports on federal advisory committees are required by the GSA.

(b) These information requirements are assigned Interagency Report Control Number 0304-GSA-OT.

(c) Since the due dates and formats of these reports have varied from year to year, no specific reporting requirements are included in this Part. All DoD Components will be given as much leadtime as possible.

PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

229.1 Purpose.
229.2 Authority.
229.3 Definitions.
229.4 Prohibited acts.
229.5 Permit requirements and exceptions.
229.6 Application for permits, and Information Collection.
229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
229.8 Issuance of permits.
229.9 Terms and conditions of permits.
229.10 Suspension and revocation of permits.
229.11 Appeals relating to permits.
229.12 Relationship to section 106 of the National Historic Preservation Act.
229.13 Custody of archaeological resources.
229.14 Determination of archaeological or commercial value and cost of restoration and repair.
229.15 Assessment of civil penalties.
229.16 Civil penalty amounts.
229.17 Other penalties and rewards.
229.18 Confidentiality of archaeological resource information.
229.19 Report.

AUTHORITY: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-*11*). (Sec. 10(a)). Related authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1027, Jan. 6, 1984, unless otherwise noted.

The requirements in this part were approved by the Office of Management and Budget under control number 1024-0037.

§ 229.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11*) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 229.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii) which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 229.3 Definitions.

As used for purposes of this part:

(a) "Archaeological resource" means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) "Material remains" means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The followiing classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(b) "Arrowhead" means any projectile point which appears to have been designed for use with an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11.*).

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 229.4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 229.8 or exempted by § 229.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 229.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or re-

BEST COPY AVAILABLE

moval, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 229.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaelogical resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 229.6. However, the Federal land manager shall insure that provisions of § 229.8 and § 229.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under § 229.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of § 229.5(b)(5), § 229.7, § 229.8(a)(3), (4), (5), (6), and (7), § 229.9, § 229.10, § 229.12, and § 229.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the

BEST COPY AVAILABLE

scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 229.6 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 229.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § 229.6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 229.9.

(4) When the Federal land manager detemines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 229.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaelogical survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (3) shall be deemed satisfied by the prior approval.

(5) Writtel consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land managers, the Federal land manager shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 229.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational insitutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 229.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

§ 229.10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 229.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under § 229.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 229.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

§ 229.12 Relationship to Section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

§ 229.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

§ 229.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 229.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 229.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

§ 229.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 229.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount

will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 229.16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 229.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of as-

sessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. § 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 229.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 229.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 229.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 229.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal lald manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under 229.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 229.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 229.19 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DOD INSTALLATIONS

Sec.

230.1 Reissuance and purpose.
230.2 Applicability and scope.
230.3 Definitions.

Sec.
230.4 Responsibilities.
230.5 General operating policies and procedures.
APPENDIX A—PROCEDURES FOR ESTABLISHING, SUPPORTING, AND TERMINATING ONBASE BANKING OFFICES
APPENDIX B—OPERATING ON ONBASE BANKING OFFICES

AUTHORITY: 10 U.S.C. 136.

SOURCE: 51 FR 6521, Feb. 25, 1986, unless otherwise noted.

§ 230.1 Reissuance and purpose.

This part reissues DoD Instruction 1000.12[1] and provides procedural guidance to supplement DoD Directive 1000.11 concerning relations with banking offices serving on DoD installations.

§ 230.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

(b) Its provisions also pertain to all banking institutions that operate on DoD installations.

§ 230.3 Definitions.

Terms used in this part are defined in 32 CFR Part 231.

§ 230.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas banking facilities and specify the charges or fees, or the basis for these, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas banking facilities as depositaries and financial agents of the U.S. Government.

(4) Maintain liaison, as necessary, with Federal and equivalent State bank regulatory agencies as defined at enclosure 2 of DoD Directive 1000.11.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation (FAR) for acquiring banking services required at overseas DoD installations.

(6) Serve as principal liaison with banking institutions having offices on overseas DoD installations. In this capacity, monitor banking facility managerial and operational policies, procedures, and operating results and take action as appropriate.

(7) Coordinate on DoD Component actions that contemplate a banking institution's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(8) As necessary, negotiate government-to-government agreements for the provision of banking services on overseas DoD installations, in accordance with DoD Instruction 2050.1.

(9) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition and Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Secretaries of the Military Departments and Directors of Defense Agencies* shall:

(1) Prescribe procedures for soliciting banking institutions to establish banking offices on respective domestic

---

[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

DoD installations. Such procedures shall prohibit DoD personnel from subjecting banking institutions to any form of coercion either while banking arrangements are under consideration or after banking offices are established.

(2) Review proposals to establish banking offices on respective domestic DoD installations, select the banking institution making the best offer and recommend designation of that institution to the appropriate regulatory agency.

(3) Forward proposals to establish banking facilities to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

(4) Provide for liaison to banking institutions operating banking offices on respective domestic DoD installations.

(5) Supervise the use of banking offices on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11

(6) Evaluate the services provided by banking offices to ensure that they fulfill the requirements upon which establishment and retention of those services were justified.

(7) Monitor practices and procedures of respective onbase banking offices to ensure that the welfare and interests of DoD personnel as consumers are protected.

(8) Assist respective onbase banking offices in developing and expanding necessary services for DoD personnel consistent with the provisions stated herein.

(9) Determine the level of logistic support to be provided to respective domestic banking institutions that submit reports reflecting nonself-sustaining status.

(10) Encourage the conversion of existing domestic banking facilities on respective installations to independent or branch bank status where feasible.

(11) Provide logistic support to overseas banking facilities under terms and conditions identified in respective contracts.

(12) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas banking service or related actions emanating from Component commands overseas.

(13) Refer matters requiring policy decisions or proposed changes to this Part or DoD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish banking offices in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Totally eliminate banking offices in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations within the command area. Personnel assigned to security assistance positions shall not perform this function without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 230.5 General operating policies and procedures.

(a) *Limitation on service.* Under singular circumstances, more than one banking institution may be permitted to operate on a DoD installation to ensure that personnel on the installation receive adequate financial services.

(1) If a particular installation demonstrably needs more services, the existing banking office shall first be given the opportunity to meet those needs.

(2) When conditions warrant consideration of a second banking institution on the installation, a request providing full details shall be forwarded through channels to the DoD Component headquarters concerned for evaluation and appropriate action. The Head of the DoD Component or designee may approve and forward such requests to

the appropriate regulatory agency after coordination with the DASD(MS).

(b) *Uniformity of service.* Financial services provided on DoD installations shall be as uniform as possible for all DoD personnel. Similarly, service charges and fee schedules shall, wherever possible, be uniform at overseas DoD installations.

(c) *Establishing banking offices.* (1) Banking offices on domestic DoD installations shall be established only with prior approval of the DoD Component concerned and the appropriate regulatory agency. Specific procedures are identified at Appendix 1. No commitment may be made to any banking institution regarding its proposal until a designation is made by the appropriate regulatory agency.

(2) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) shall operate on domestic DoD installations.

(3) Except under singular circumstances, DoD Components may establish banking facilities only overseas and in those states that prohibit branch banking.

(4) Where domestic DoD installations are unable to obtain onbase banking services, the DoD Component concerned may contact the financial community about installing automated teller machines (ATMs).

(i) Proposals that offer shared-access ATMs shall receive preference.

(ii) The financial institution selected must secure regulatory agency approval, where necessary, before commencing ATM service.

(iii) Action taken in response to such proposals shall be exempt from the limitation in paragraph (a) of this section. The availability of ATM service shall not preclude the later establishment of a banking office if conditions on an installation should change.

(5) The provision of banking services by means other than duly chartered public sector banking offices or ATM service is subject to prior review and approval by the DASD(MS).

(6) In those cases where authorization will be required for the banking institution to act as a Treasury General Account domestic depositary, the banking institution shall satisfy the risk management standards established by the Treasury Department.

(d) *Operating agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and onbase banking institution. A sample format is contained in DoD 4000.19-R. At a minimum, each agreement shall include the following provisions:

(1) Services to be rendered and the conditions therefor. To the extent feasible, full financial services shall be provided; however, agreements entered into under this provision may not restrict the banking institution's right to adjust services and fees to maintain consistency with competing institutions or the banking institution's branch-wide service offerings and fee schedules.

(2) Banking institution agreement to:

(i) Comply with this part, DoD Directive 1000.11, DoD Component regulations that implement these issuances;

(ii) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the banking institution; and

(iii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Banking office personnel invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(3) Agreement that neither the DoD Component concerned nor its representatives will be responsible or liable for the financial operation of the banking office or for any loss (including criminal losses), expense, or claim for damages arising from banking office operation.

(4) Installation (community) commander's agreement to provide support as specified at Appendix 1 of this part.

(e) *Liaison officers.* In the interest of maintaining effective lines of communication, each commander of an installation with an onbase banking office shall appoint a bank liaison officer as defined at enclosure 2 of DoD Directive 1000.11.

(1) The bank liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase banking office.

(2) The liaison officer shall maintain regular contact with the banking office manager to confer, help resolve customer complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in the internal operations of the banking office.

(3) No one on the board of directors or serving the banking institution in another official capacity may serve as bank or credit union liaison officer.

(f) *DoD personnel as directors of banking institutions.* (1) DoD personnel may not serve as directors of banking institutions that operate on installations where they are currently assigned.

(2) Members of DoD reserve components called to active duty while serving as directors of banking institutions with onbase banking offices need not resign those directorships because of their changed status.

(g) *Complaints processing*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase banking institution shall try to resolve any such problem by negotiation. Failing this, in accordance with implementing DoD Component regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report to the appropriate regulatory agency evidence suggesting malpractice by banking office personnel, in accordance with implementing DoD Component regulations.

(3) *Follow-up.* A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DASD(MS). The DASD(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic support*—(1) *Categories of domestic banking offices.* For the purpose of authorizing logistic support, banking offices are categorized either as self-sustaining or nonself-sustaining.

(i) A domestic banking office is considered to be self-sustaining until, based upon financial data provided by the banking institution, the DoD Component concerned determines it to be nonself-sustaining. Payment of rent for space and reimbursement for utilities furnished shall be required from self-sustaining banking offices. Nonself-sustaining banking offices may receive building space and utilities free of charge under procedures prescribed by the DoD Component concerned.

(ii) Normally, a domestic banking office shall have nonself-sustaining status for at least four consecutive calendar quarters before qualifying for logistic support. Conversely, a nonself-sustaining banking office would not be designated as self-sustaining until it has experienced four consecutive quarters of profitable operation

(2) *Detailed procedures.* Details of required and authorized support for onbase banking offices are provided by Appendix 1.

(i) *Termination of banking service*—(1) *Termination of operations by the banking institution.* An onbase banking office planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the banking office to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with paragraph (c) of this section.

(2) *Termination for cause.* If, after discussion with banking institution officials, the installation commander determines that the operating policies of the banking office are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a banking office from the installation shall be made only with approval by the DoD Component headquarters, after coordination with the DASD(MS) and the appropriate regulatory agency.

APPENDIX A—PROCEDURES FOR ESTABLISHING, SUPPORTING, AND TERMINATING ONBASE BANKING OFFICES

A. Establishing Banking Offices

1. *General.* DoD Components shall review banking institution proposals and recommend selections in accordance with § 230.5(c). Banking institutions selected for domestic onbase operations must obtain authority from the appropriate regulatory agency before commencing such operation.

a. In the case of State chartered institutions that are members of the Federal Reserve System, approval shall also be obtained from the Federal Reserve Bank for the district in which the proposed banking office is located.

b. In the case of State-chartered savings associations, approval shall be obtained from appropriate State regulatory agencies.

c. In the case of federally chartered savings associations, the determination shall be made by the Federal Home Loan Bank Board or its principal supervisory agent for the district in which the association does business.

2. *Domestic Banking Offices.* a. Each DoD Component shall develop internal instructions that govern the submission and justification of requests to establish banking facilities on respecitive installations. The following information shall be included in requests to the DoD Component headquarters for banking facility establishment:

(1) Justification for establishment of a banking facility as opposed to another type of banking office.

(2) Such other supporting data as deemed necessary by the DoD Component concerned.

b. Proposals received by installation commanders to establish an independent or branch bank or a savings association office shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

c. The DoD Component headquarters concerned shall evaluate each proposal to establish such offices and, if acceptable, recommend designation by the appropriate regulatory agency.

(1) If there is no existing banking office on the installation and it is determined that one is needed, the DoD Component concerned shall solicit proposals from other nearby banking institutions before making a determination.

(2) If a banking office other than a banking facility already is operating on the DoD installation, the provisions of § 230.5(a)(1) apply.

(3) If the proposal offers to replace an existing banking facility with an independent or branch bank, the DoD Component concerned shall offer the banking institution currently operating the facility an opportunity to submit a proposal to convert the facility.

(4) With respect to a proposed independent or branch bank, preference shall be given to the banking institution that has operated the banking facility, provided that prior banking service has been satisfactory and that the institution's proposal is deemed adequate.

(5) Proposals to establish new banking facilities shall be forwarded to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

3. *Conversions of Domestic Banking Facilities to Independent or Branch Banks.* DoD Components shall encourage banking institutions that operate banking facilities to convert them to independent or branch banks, if consistent with State law. Proposals from a banking institution to convert an existing banking facility to an independent or branch bank shall be forwarded to the DoD Component headquarters concerned for its approval after coordination with the DASD(MS) and Treasury Department.

4. *Domestic Automated Teller Machine (ATM) Service.* a. ATMs may be used to augment service provided by an onbase banking office.

(1) An onbase banking facility may be authorized to site ATMs on the installation if it conforms to the following requirements.

Further approval by the Treasury Department is not required.

(2) An onbase branch or independent bank may site ATMs on the installation after obtaining the approval of the appropriate regulatory agency, if required to do so by the regulations of that agency, and by conforming to the following requirements.

b. A banking institution proposing to augment onbase banking office service by installing one or more ATMs shall:

(1) Coordinate the ATM proposal through the installation commander according to DoD Component regulations;

(2) Provide a statement that the cost of ATM installation and maintenance shall be borne by the banking institution alone or in conjunction with other financial institutions; and

(3) Provide for access through debit transaction cards, rather than restricting access to holders of a financial institution's credit cards.

c. Upon approval, appropriate leases shall be negotiated in accordance with this Instruction

(1) No lease is needed to site an ATM within the existing banking office.

(2) When a banking office requests up to 100 square feet of additional floor space in an existing structure, and the banking office agrees to bear all expenses for modifying the structure, a lease providing for an annual rental fee of $1.00 shall be locally negotiated and approved. This lease provision also shall be offered if the banking office requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of any maintenance, utilities, and services provided by the installation shall be borne by the banking office.

(3) Leases pertaining to other situations shall be negotiated in accordance with section C., below.

5. *Overseas Banking Facilities Operated under Contract.* a. In implementing this Instruction, each DoD Component shall develop internal instructions governing the submission of requests justifying the need for banking facilities proposed for particular overseas installations. Upon favorable review by the DoD Component headquarters concerned, such requests shall be submitted to the DASD(MS) with a recommendation for inclusion in the appropriate contract, subject to the conditions set forth below.

b. As a general rule, banking facilities may be established when the installation (community) population meets the following criteria:

(1) *Full-Time Banking Facility.* Except in unusual circumstances, a total of at least 1,000 permanent party military personnel and DoD civilian employees is necessary to qualify for a full-time banking facility.

(2) *Part-Time Banking Facility.* Except in unusual circumstances, a total of at least 250 permanent party military personnel and DoD civilian employees is necessary to qualify for a part-time banking facility.

c. If the population at certain remote areas is not sufficient to qualify under the criteria for full- or part-time banking facilities, the installation (community) commander shall explore all other alternatives for acquiring limited banking services (such as check-cashing and accommodation exchange service by disbursing officers and their agents) before requesting establishment of a banking facility as an exception to these provisions.

d. The data used to justify establishment of overseas banking facilities shall include but not be limited to:

(1) The approximate number of DoD personnel at the installation and any other persons who may be authorized to use the banking facility.

(2) The distances between the installation and the nearest banking facility and credit union offices, the operators of those institutions, and the installations (military communities) at which they are located.

(3) The availability of official and public transportation between the installation and the nearest banking facility and credit union office.

(4) The approximate loss of duty time as a result of DoD personnel leaving the installation to obtain banking services.

(5) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(6) Source(s) from which the military disbursing officer presently obtains operating and payroll cash, the frequency of these cash acquisitions, and the approximate dollar value obtained monthly.

(7) The name and location of the depositary now being used by the military disbursing officer to make official deposits for credit to the U.S. Treasury's General Account.

(8) The estimated savings to the military disbursing officer if a banking facility is established on the installation.

(9) A list of organizational and nonappropriated fund accounts, the name(s) and location(s) of the banking institution where presently deposited, and the average daily activity and balance of each account.

(10) A written description and photographs of drawings of the space proposed for banking facility use. The extent and approximate cost of required alterations, including the construction of counters and teller cages, shall be included.

(11) A statement detailing the requirements of the proposed banking facility for safes, a vault, or both; appropriate alarm

systems; and camera surveillance equipment, where deemed necessary. The statement shall include the costs of such equipment and the manner in which it will be acquired.

(12) In countries without U.S.-operated banking facilities, a statement as required by § 230.4(e)(1).

e. Establishment of an overseas banking facility is predicated upon: (1) Designation of the facility contractor as a depositary and financial agent of the U.S. Government by the Fiscal Assistant Secretary of the Treasury;

(2) The availability of proposed banking contractors able and willing to bid for the operation of the facility, and the reasonableness of such proposals; and

(3) The availability of appropriated funds to underwrite such banking services.

6. *Other Overseas Banking Offices.* The banking and currency control laws of certain host countries do not permit U.S. banking institutions to operate banking facilities on DoD installations.

a. Commanders of installations (communities) in such countries where there is a demonstrated need for additional banking service and the population meets the above criterion shall forward requests for banking services, or unsolicited proposals from local banks, through command channels with supporting data as required in paragraph A.5.d., above.

b. If the DoD Component concerned concurs in the request, it shall be forwarded to the DASD(MS) for approval and coordination with the Fiscal Assistant Secretary of the Treasury for designation of the parent banking institution as a depositary and financial agent of the U.S. Government.

c. Banking offices in this category shall become operational only after Treasury designation of the parent banking institution and an indication of the institution's willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits in a form acceptable to the DASD(MS) and the Fiscal Assistant Secretary of the Treasury.

B. Support of Onbase Banking Offices

1. *General.* DoD Component regulations that implement this Instruction shall provide for installation support to all onbase banking offices, including:

a. Military or civilian guards (the latter to be used within the installation only), military police, or other protective services to accompany shipments of money from the parent banking institution or other source when such monies are primarily for use by the military disbursing officer, on paydays and when required to avoid undue risks or insurance costs on the part of the onbase banking office. In this regard, overall security precautions normally present shall be considered.

b. Central locator service, under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by onbase banking offices. This service shall be provided at no cost in accordance with DoD Instruction 7230.7.

c. Debt processing assistance in accordance with DoD Directive 1344.9 as limited by the Privacy Act guidelines set forth in enclosure 3 DoD Directive 1000.11. If delinquent loans or dishonored checks are not recouped within 48 hours, banking institutions operating on DoD installations may bring them to the attention of the local commander, bank liaison officer or other designee, for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

d. Clearance procedures for military personnel departing their installations which provide the onbase banking office with adequate notice of its customers' impending departure. Clearance involves reporting a change of address, reaffirming allotments or notes payable and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the financial institution and its departing customers. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian personnel.

e. Prohibition of traveler's check and money order sales by organizations other than the onbase banking office, post office, and credit union during times when the banking office is open for business.

2. *Domestic Nonself-Sustaining Banking Offices.* When a DoD Component determines that a banking office has nonself-sustaining status, it may furnish logistic support, as provided herein, without charge.

a. Through no-cost permits or licenses, a nonself-sustaining banking office may be provided space on a DoD installation at one or more locations for up to 5 years, as prescribed in DoD Directive 4165.6. The cumulative total of space authorized for one or more locations is subject to the limitations contained in DoD 4270.1-M.

b. All space assigned by the GSA, whether leased or in Federal office buildings, is reimbursable to the GSA at the standard level user charge, under Pub. L. 92-313. Consequently, the GSA shall charge the benefiting DoD Component for any GSA space assigned for banking office operations.

c. In those exceptional cases when a nonself-sustaining banking office is authorized to construct its own building or use its funds to expand, modify, or renovate Government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the banking office is determined to be self-sustaining, whichever occurs first. The provisions of section C., below, apply in the latter case.

d. The term "logistic support" shall include:

(1) Customer and work areas, in accordance with DoD 4270.1-M. It is important that the banking office be housed in a building accessible to most DoD personnel on the installation, in a location permitting maximum security.

(2) Steel bars, grillwork, security doors, a vault or safe (or both), burglar alarm system, other security features normally used by banking institutions, construction of counters and teller cages, and other necessary modifications and alterations to existing buildings delimited in DoD Directive 4270.24.

(3) Utilities, custodial and janitorial services, and intrastation telephone service. The banking office shall pay costs for long-distance toll calls, however.

(4) Air-conditioning, which is considered a normal utility for banking offices located on installations qualifying for air-conditioning under DoD Component regulations. Banking space is classified as administrative space on DoD installations.

(5) When available from local stock, lease of the following at nominal cost, i.e., $1.00 per year, under authority of 10 U.S.C. 2667: typewriters, adding machines, other office equipment, and office furniture.

e. All maintenance, repair, rehabilitation, alterations, or construction for onbase banking offices shall comply with DoD Instruction 4165.64.

f. Upon determination that a banking office has become self-sustaining, its no-cost lease or permit shall be canceled and a lease negotiated in accordance with section C., below.

3. *Additional Support in Overseas Areas.* a. *Banking Facilities Operated Under Contract.* In addition to the logistic support identified above, the following shall be made available to banking facilities operating under DoD contract at overseas installations:

(1) U.S. Military Postal Service under DoD Directive 4525.6. Mail must bear necessary postage.

(2) AUTOVON and AUTODIN as approved on a case-by-case basis.

(3) Certificates of nonavailability, if required by the designated property administrator, when items of office equipment or furniture requested by the banking facility are unavailable for loan on memorandum receipt.

(4) Vehicle registration and purchase of fuel from Government-owned facilities for bank-operated vehicles if not in conflict with host country agreements. Vehicle registrations shall be subject to normal fees.

(5) Public quarters under DoD Instruction 4165.44 to key banking facility personnel unable to find suitable, reasonably priced housing in the vicinity of the DoD installation. Rent charged shall be in accordance with DoD Instruction 4165.42.

(6) Travel of a U.S.-based banking institution officials to their overseas onbase offices as set forth in DoD Directive 4000.6. Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(7) Other support as required under the terms and conditions established during annual contract negotiations and confirmed in respective contracts. Suggestions for change may be forwarded through military channels to the DASD(MS).

b. *Other Overseas Banking Offices.* (1) Logistic support shall be negotiated with the parent banking institution and the resulting provisions incorporated into written operating agreements.

(2) Logistic support should not exceed that provided to banking offices in the United States. Whenever possible, parent banking institutions shall reimburse the DoD Component concerned for logistic support.

C. Leases of Government Real Property

1. *Government-Owned Buildings.* The lease of an existing structure to house a self-sustaining banking office shall be at appraised fair market rental value under the following terms and considerations:

a. The lease term shall not exceed 5 years, subject to renewal by mutual agreement, with the head of the DoD Component concerned reserving the right to terminate the lease under conditions specified in paragraph C.2.a., below. The banking institution shall reimburse the DoD Component concerned for GSA-assigned space at the standard level user charge.

b. When the banking institution uses its own funds to modify or renovate government building space, a lease may be negotiated for a period not to exceed 25 years. Duration of the lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

c. The lessee shall perform any required interior alteration and maintenance and shall pay for utilities and custodial, janitorial, and other services furnished.

2. *Government-Owned Land.* a. Except as provided in paragraph B.2.c., above, land required for approved building construction at

bank expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease.

b. When a banking institution participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the banking office.

c. When, under the terms of a lease, title to improvements passes to the Government, arrangements shall normally be made:

(1) By no-cost permit or license for the continued occupancy of those improvements by a nonself-sustaining banking office if it continues to be nonself-sustaining. When the square footage involved exceeds that authorized in DoD 4270.1-M the banking office shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space; or

(2) By lease for continued occupancy of those improvements by a self-sustaining banking office at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and pay the cost of utilities and services furnished, in accordance with DoD Directive 4000.6.

3. *Other Lease Considerations.* a. The term of a lease may exceed 5 years only when a Military Department Secretary, or designee, determines that such an extended term will promote the national defense or be in the public interest, per 10 U.S.C 2667(b)(1).

b. Leases shall include the provision that, in the event of national emergency or the following events, at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition:

(1) Installation inactivation, closing, or other disposal action,

or

(2) Termination of the banking institution's lease under § 230.5(i).

c. Leases executed before this part takes effect shall not be altered unless a lessee specifically requests a renegotiation under these provisions. No lease contract may be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the Government, except as provided in § 230.5(h).

D. Construction of Bank Buildings

Banking institution proposals to finance construction of buildings on domestic DoD installations must be processed in accordance with the DoD Instruction 7700.18. In support of each construction proposal, the banking institution shall provide written assurance that:

1. Management understands its potential loss of the building in the event of installation closure or other delimiting condition identified in paragraph C.3.b., above;

2. The proposed building will serve only the needs of the banking office and will not be used to house other activities; and

3. Management accepts financial responsibility for and will reimburse the U.S. Government for all costs of construction and maintenance, utilities, and other services furnished. Rates shall be established per DoD Directive 4000.6 and confirmed by a written agreement between the DoD installation and the banking institution.

E. Banking Office Termination

1. *Domestic Banking Facilities.* a. The installation commander shall notify the DoD Component headquarters concerned when a banking facility has been placed in an inactive status and when personnel reductions at the DoD installation have reduced banking facility operations to below a justifiable level. The DoD Component shall advise the DASD (MS) and the Fiscal Assistant Secretary of the Treasury so that the banking institution's authority to operate the banking facility may be terminated.

b. In general, the parent banking institution may close a banking facility after sending written notification to the Treasury Department and the installation commander not less than 90 days before the closing date. The Treasury Department will then terminate the banking institution's authority to operate the banking facility, and the DoD Component concerned shall determine the feasibility of requesting another banking institution to operate at the installation.

2. *Other Domestic Banking Offices.* a. Requests for termination for cause shall be processed in accordance with § 230.5(i)(2).

b. Banking offices other than banking facilities may be terminated by the parent banking institution provided written notice is furnished to the installation commander not less than 90 days before the closing date.

3. *Overseas Banking Facilities Operated Under Contract.* a. The installation (community) commander shall, through DoD Component channels, notify the DASD(MS) when personnel reductions or other situations at the DoD installation (military community) have reduced banking activity to below a level justifying continued operation.

b. Such notifications shall indicate whether a part-time facility should be established and the number of hours and days per week that such an operation is justified.

4. *Other Overseas Banking Offices.* Terminations shall be effected under termination clauses in respective operating agreements. Notice of intent to terminate, including the closing date, shall be forwarded by the overseas component commander per DoD Component implementing instructions. The DoD Component shall so notify the DASD(MS) and Fiscal Assistant Secretary of the Treasury so that the banking institution's authority as a depositary and financial agent of the U.S. Government may be revoked.

F. Notification of Banking Offices

Each DoD Component shall ensure that every banking institution with an office at its installations receives a copy of the document that implements this Instruction and DoD Directive 1000.11.

APPENDIX B—OPERATIONS OF ONBASE BANKING OFFICES

A. Services Rendered

1. *To Individuals and Nonappropriated Fund Instrumentalities.* a. Normally, banking offices shall provide the same services at DoD installations as available locally. Service charges or fees levied for such services may not exceed those customary for the banking institution that operates the banking office, with the following exceptions:

(1) Treasury checks shall be cashed for all DoD personnel and there will be no charge to the banking office's accountholders.

(2) A reasonable charge may be made for cashing personal checks; however, checks drawn on the banking institution operating the banking office shall be cashed without charge provided sufficient collected funds are on deposit to cover such checks.

b. Counseling service shall be made available without charge to individual accountholders. Such services shall include helping customers to budget and solve financial problems. Military members in junior enlisted grades or newly married couples who apply for loans shall receive special attention and counseling.

c. In accordance with accepted banking practice, policies on loans to individuals are expected to be as liberal as possible while remaining consistent with the overall interests of the banking institution and its stockholders.

(1) Onbase banking offices must strive to provide the best possible service to all customers. Offices that evidence a policy of discrimination in their loan services are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in § 230.5(g)(1).

(2) Onbase banking offices shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase banking office refer a prospective borrower to an offbase office of the same institution, it shall advise the latter office that the DoD requires compliance with the Standards of Fairness before executing the loan or credit agreement.

2. *To Disbursing Officers.* a. Banking offices are expected to provide payroll cash to military disbursing offices, upon request. Local operating funds may be expended if the banking office requests reimbursement for costs incurred.

b. When so authorized, banking offices shall accept deposits for credit to the Treasury's General Account.

B. Staffing

1. Onbase banking offices are expected to be adequately staffed commensurate with banking industry standards for similar numbers of accountholders and financial services rendered. Staffing at overseas banking facilities operated under contract shall be maintained within negotiated ceilings.

2. Remote service locations at the same installation may be staffed with one person alone, provided that there is a direct courier or message service to the main onbase banking office.

3. All staffing shall fully comply with the spirit and intent of the DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1100.15.

4. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase banking office. However, off-duty DoD personnel may be employed by a banking office if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

C. Hours of Operation

1. *General.* Onbase banking offices may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Banking offices should set operating hours that meet the needs of all concerned. ATMs may be used to provide expanded service and operating hours.

2. *Overseas Banking Facilities Operated Under Contract.* Although respective contracts limit the number of operating hours per week, installation (community) commanders and banking facility managers are encouraged to agree on the specific days and hours of operation that best meet local needs.

a. Operating days negotiated locally may include Saturdays and operating hours may include evening hours when necessary to complement or parallel other retail services available to DoD personnel, provided the contractor agrees to provide such service at no additional cost to the Government.

b. When cost implications are involved, the installation (community) commander shall forward his request for expanded or modified days or hours of operation, with a justification therefor, through military channels for consideration by the DASD(MS).

D. Deposit Insurance

Domestic onbase banking offices must provide insurance coverage by the FDIC (for commercial banks and certain savings banks) or FSLIC (for certain savings banks and all other savings associations as defined in DoD Directive 1000.11. A banking office not maintaining such insurance shall be suspended from onbase operation.

E. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through onbase banking offices.

1. The banking institution shall credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the banking office's customer. Allotments voluntarily consigned to a banking office shall continue at the option of the allotter.

F. Advertising

1. Advertising of onbase banking services shall be in harmony with applicable policies continued in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited with the exception of insert advertising in the *Stars and Stripes* overseas.

3. DoD Instruction 5120.20 precludes use of the Armed Forces Radio and Television Service to promote a specific financial institution.

4. Onbase banking offices may use the unofficial section of the installation daily bulletin, provided space is available, to inform DoD personnel of financial services and announce seminars, consumer information programs, and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

5. Onbase banking offices may use onbase information bulletin boards for announcements of a broad general nature that complement the installation's financial counseling and thrift promotion programs. Onbase banking offices may use installation message center services to distribute, with moderation, announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installations, to include military exchange outlets or concessionaires, shall not permit the distribution of competitive literature from other banking institutions at locations served by onbase banking offices. This does not preclude a banking institution from using commercial advertising or mailings to serve its customers.

G. Supplemental Conditions for Overseas Operation

1. *General.* Overseas banking facilities shall operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

2. *Authorized Customers.* Respective banking contracts specify personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals and organizations that qualify for individual logistic support under the regulations of the DoD Component concerned, provided that use of banking services is not precluded by status of forces agreement, other intergovernmental agreement, or local law.

3. *Services Rendered.* Services to be rendered and related charges shall be specified in respective contracts. Suggestions for expansion or modification of authorized services, fees, or charges may be forwarded through military channels to the DASD(MS). Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host-country law.

4. *Acceptance of Services Rendered.* DoD Component regulations implementing this Instruction shall require each commander of an installation (military community) with a banking facility, or designee, to:

a. Review monthly income, expense, and activity statements provided by full-time banking facilities.

b. Report to the banking facility manager within 7 calendar days of discovery, and deficiency in the delivery of contractual banking services. If the deficiency is not remedied within 30 calendar days, the commander shall report the matter through military channels to the DASD(MS).

5. *Other Operating Conditions.* a. Both the banking facility contractor and DoD dis-

bursing officers shall ensure that cash management practices minimize the cash required to conduct business.

b. Banking facility provision of foreign currencies shall be in accordance with DoD Directive 7360.11.

c. When military payment certificates are prescribed for the area in which the overseas banking facility is operating, they shall be used in accordance with DoD Instruction 7360.5 and DoD Component regulations which implement that Instruction.

d. Overseas major commanders shall cooperate with banking facility contractors in planning for the provision or termination of banking services in the event of hostilities or other emergencies.

6. *Other Overseas Banking Offices.* a. Operating agreements executed under § 230.5(d) shall specify authorized customers, services rendered and related charges, and conditions of operation. To the extent feasible, services and charges shall be negotiated to parallel those provided by banking facilities operated under the DoD banking contracts.

b. Before such agreements are executed, they shall be coordinated with the Unified Commander, or designee and the DoD Component concerned. Upon approval, copies shall be provided to the DASD(MS).

PART 231—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.

231.1 Purpose.
231.2 Applicability.
231.3 Definitions.
231.4 Objectives.
231.5 Policies.
231.6 Responsibilities.
APPENDIX—GUIDELINES FOR APPLICATION OF THE PRIVACY ACT TO FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

AUTHORITY: 10 U.S.C. 136.

SOURCE: 51 FR 6528, Feb. 25, 1986, unless otherwise noted.

§ 231.1 Purpose.

This part replaces DoD Directive 1000.10 [1] (Dec. 23, 81) and DoD Directive 1000.11. It consolidates and clarifies policies for financial institutions that serve DoD personnel on DoD installations worldwide. Associated procedures are contained in DoD Instruction 1000.10 (Feb. 3, 86) and DoD Instruction 1000.12.

§ 231.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

§ 231.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds among a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbuttons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/credit union liaison officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A noncommissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking facility. A banking office located on a DoD installation and operated by a banking institution that the Treasury Department has specifically authorized, under its designation as a "depository and financial agent of the U.S. Government," to provide certain banking services at the installation. Such offices may be either self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking institution. The organization that is chartered to operate a banking office on a DoD installation. For purposes of this part and DoD Instructions 1000.10 and 1000.12 the term also includes savings associations as defined herein.

---

[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

Banking office. A banking facility, branch bank, or independent bank operated by a banking institution on a DoD installation. Also includes savings associations and their branches operated on a DoD installation.

Branch bank. A separate unit chartered to operate at an on-base location geographically remote from its parent banking institution.

Credit union A cooperative nonprofit association, incorporated under the Federal Credit Union Act, 12 U.S.C. 1751 et seq., or similar state statute, for the purposes of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

Credit union branch. A subsidiary office of an existing full-service credit union.

Credit union facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling during normal working hours.

Defense credit union. A state or federally chartered credit union with a field of membership composed primarily of DoD personnel.

Discrimination. Any differential treatment in provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex, marital status, age, rank, or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD personnel. All military personnel; civil service employees; other civilian employees, including special Government employees of all offices, agencies, and departments performing functions on a DoD installation (including non-appropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD installation. A military installation located within a state of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Fair market rental. A reasonable charge for onbase land, buildings, or building space (i.e., property). Rental is determined by a Government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase property may not always be comparable to similar property in the local commercial geographic area: for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the Government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and chartered, supervised, and periodically examined by the National Credit Union Administration.

Field of membership. The group of people entitled to credit union membership because of a common bond of occupation or association; or employment or residence within a well-defined neighborhood, community, or rural district. The field of membership is defined in the credit union's charter by the Federal or State regulatory agency.

Financial institution. This term encompasses any banking institution, credit union, and subordinate office or facility, each as separately defined herein.

Financial services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders, and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-service credit union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-time banking facility. A banking facility that operates at least 5 days a week.

Independent bank. A bank specifically chartered to operate on a DoD installation, whose directors and officers usually come from the local business and professional community. Such operations are thus differentiated from countywide or statewide branch systems consisting of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties, or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials know that an action or inaction violated a law or regulation.

National bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD installation. A military installation (or community) located outside the states of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Part-time banking facility. A banking facility that operates fewer than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings Association. A state or federally chartered mutual or stock savings institution, to include savings and loan associations, building and loan associations, homestead associations, and savings banks.

Share draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a Federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231.4 Objectives.

The objectives of this part are to ensure that:

(a) Arrangements for the provision of services by financial institutions are consistent among the DoD Components.

(b) Financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated herein.

§ 231.5 Policies.

(a) Duly chartered financial institutions may be authorized to provide services, where demonstrated and justified needs exist, to facilitate the administration of public and quasi-public monies and enhance the morale and welfare of DoD personnel.

(b) Financial institutions shall be established on DoD installations only after approval by the appropriate regulatory agency and the DoD Component concerned.

(1) Independent or branch banks, full-service credit unions, and savings associations are the preferred sources of onbase service at domestic installations.

(2) Banking facilities shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, banking facilities shall be used only at overseas locations and in states that prohibit branch banking. In times of mobilization, it may become necessary to designate additional banking facilities as an emergency measure. Upon recommendation by a DoD Component, banking facilities are designated by the Treasury Department under authority contained in 12 U.S.C. 265.

(3) The extension of banking facility and credit union services overseas is encouraged, consistent with the policies stated herein and with pertinent status of forces agreements, bilateral arrangements, and local laws.

(4) Retail banking operations shall not be performed by DoD activities. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.

(c) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in DoD Instruction 1000.10 and DoD Instruction 1000.12.

(d) Military disbursing offices, nonappropriated fund instrumentalities, and other DoD installation activities shall use onbase financial institutions to the maximum extent feasible and consistent with sound management practice.

(e) The termination of operations by an onbase financial institution shall be initiated by a DoD Component only under one of the following conditions:

(1) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating or substantially reducing the requirement for financial services.

(2) Active military operations preclude continuation of onbase financial services.

(3) The performance of the financial institution in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the procedures prescribed in DoD Instruction 1000.10 and DoD Instruction 1000.12. Termination actions begun on the basis of inadequate performance shall be substantiated by sufficient evidence. Such actions shall be coordinated with the appropriate regulatory agency and the Assistant Secretary of Defense (Comptroller) before being carried out.

(4) Where the financial institution has also been designated as a Treasury General Account (TGA) domestic depository, its authorization as a TGA depositary may be withdrawn by the Treasury Department if the financial institution's rating, from a Treasury Department approved rating service, is "D" or lower. In those cases where TGA authorization is withdrawn, the DoD Component may initiate termination of operations under provisions of paragraph (e)(3) of this section.

(f) DoD personnel who tender uncollectible checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and affect the public image of all DoD personnel. Furthermore, losses sustained by financial institutions on DoD installations as a result of these actions increase operating costs and may reduce the institutions' viability. Such added operating costs must be borne by other customers and, in some cases, may increase the cost to the Government of providing onbase financial services. Military financial counselors or legal advisors shall recommend workable repayment plans that avoid further endangering credit ratings and careers of affected personnel. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only as a last resort, when no other alternative will alleviate the situation.

§ 231.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall:

(1) Develop and monitor policies and procedures governing establishment, operation, and termination of financial institutions on DoD installations.

(2) Monitor industry trends, conduct studies and surveys, and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinating as

necessary with DoD Components, financial institutions, and trade associations.

(3) Maintain liaison, as appropriate, with financial institution regulatory agencies at Federal and State levels.

(4) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies toward respective memberships and to aid in resolving mutual concerns affecting provision of financial services.

(5) Coordinate with the Assistant Secretary of Defense (Force Management and Personnel) on all aspects of morale and welfare and Assistant Secretary of Defense (Acquisition and Logistics) on all aspects of logistic support for onbase financial institutions.

(6) Take final action on requests for exceptions to this Directive.

(b) *The Assistant Secretary of Defense (Acquisition and Logistics)* (ASD(A&L)) shall develop and monitor policies and procedures governing logistic support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall advise the ASD(C) of all aspects of onbase financial institution services that affect the morale and welfare of DoD personnel.

(d) The *Heads of DoD Components* shall:

(1) Take action on requests to establish or terminate financial institution operations on respective installations subject to the provisions of DoD Instructions 1000.10 and 1000.12.

(2) Supervise and encourage the use of financial institutions on DoD installations as a means to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of onbase activities.

(ii) Assist DoD personnel in managing their personal finances by participating in direct deposit programs and regular savings plans. Use of onbase financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(3) Recognize the right of military personnel and civilian employees to organize and join credit unions formed under duly constituted authority, and encourage the application and expansion of the principles of the credit union movement throughout the DoD establishment.

(4) Encourage and assist duly chartered financial institutions to provide complete financial services on DoD installations where there is a demonstrated need for such services.

(5) Establish liaison, as appropriate, with Federal and State regulatory agencies and financial institution trade associations, leagues, and councils.

(6) Provide debt processing assistance to onbase financial institutions in accordance with the Privacy Act guidelines set forth in Appendix of this part.

APPENDIX-GUIDELINES FOR APPLICATION OF THE PRIVACY ACT TO FINANCIAL INSTITUTIONS IN DOD INSTALLATIONS

A. The following guidelines govern application of DoD Directive 5400.11 to those financial institutions that operate under this part.

1. Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of 12 U.S.C. 1751 et seq.

a. These financial institutions do not fit the definition of "agency" to which the Privacy Act applies: ". . . any executive department, Military Department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or an independent regulatory agency" (5 U.S.C. 552(e) and 552(A)(1)).

b. Nor are they "government contractors" within the meaning of section 552a(m), as they do not operate a system of records on behalf of an agency ". . . to accomplish an agency function." According to the Office of Management and Budget Privacy Act Guidelines, the provision relating to Government contractors applies only to systems of records ". . . actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act." Clearly, the subject institutions do not meet these criteria.

c. Since the Act does not apply to them, these financial institutions are not required to comply with the provision of Section 552(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within onbase banking and credit union offices.

2. The financial institutions concerned hold the same position and relationship to their accountholders and members and to the Government as they did before enactment. Within their usual business relationships, they still are responsible for safeguarding the information provided by their accountholders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

3. Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their accountholders or members.

I hereby authorize the Department of Defence and its various Departments and Commands to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

When the financial institution presents such signed authorizations, the Military Commands or installations shall provide the appropriate information.

4. Even though the agreement described in subsection A.3., has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment, consistent with the Privacy Act and Freedom of Information Act, DoD Directives 5400.11 and 5400.7. Some examples of personal information pertaining to DoD personnel that can normally be released without creating and unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

5. When DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, they should be located by contacting the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor shall either furnish the individual's new official duty location address to the financial institution, or shall forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individuals's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department of Defense may, at its discretion, forward correspondence to the individual's last known home address. The individual may choose not to respond, and the Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with it.

B. Questions concerning this guidance should be forwarded through channels to the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), The Pentagon, Washington, DC 20301.

PART 231a—PROCEDURES GOVERNING CREDIT UNIONS ON DoD INSTALLATIONS

Sec.
231a.1 Purpose.
231a.2 Applicability and scope.
231a.3 Definitions.
231a.4 Responsibilities.
231a.5 General operating policies and procedures.

APPENDIX—OPERATIONS OF DEFENSE CREDIT UNIONS

AUTHORITY: 10 U.S.C. 136.

SOURCE: 51 FR 6532, Feb. 25, 1986, unless otherwise noted.

§ 231a.1 Purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11[1] concerning relations with credit unions serving on DoD installations.

§ 231a.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), and Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

(b) Its provisions also pertain to all credit unions that operate on DoD installations.

§ 231a.3 Definitions.

Terms used in this part are defined in 32 CFR Part 231.

§ 231a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD credit union program, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel).

(2) Maintain liaison, as necessary, with the National Credit Union Administration (NCUA) and equivalent State regulatory agencies.

(3) Coordinate on DoD Component actions that propose a credit union's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(4) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition and Logistics)* (ASD (A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* ASD (FM&P)) shall carry out responsibilities outlined in subsection F.3 of DoD Directive 1000.11.

(d) The *Secretaries of the Military Departments and Director of Defense Agencies* shall:

(1) Supervise the use of credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(2) Assist respective onbase credit unions in developing and expanding necessary services for DoD personnel, consistent with the provisions stated herein.

(3) Encourage DoD personnel to serve on credit union boards and committees on a voluntary basis, without compensation, when neither conflict of duty nor conflict of interest is involved, as stated in DoD Directive 5500.7. Such personnel may be allowed to attend credit union conferences and meetings in accordance with DoD Directive 1327.5, Civilian Personnel Manual (CPM) Supplement 990-2, and CompGen Decision B-212457.

(4) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas credit union service or related actions emanating from overseas component commands.

(5) Refer matters requiring policy decisions or proposed changes to the provisions of this Part or DoD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish credit union service in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Totally eliminate credit union service in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

---

[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Form Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120

(2) Monitor and coordinate credit union operations within the command area. Personnel assigned to security assistance positions shall not serve in this capacity without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 231a.5 General operating policies and procedures.

(a) *General.* Given their unique role in promoting morale and welfare, credit unions operating on DoD installations shall be recognized and assisted by DoD Components at all echelons. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(b) *Limitation on service.* (1) Only one credit union shall establish a branch or facility on a DoD installation, and its field of membership normally shall include all assigned DoD personnel. However, on installations where more than one credit union already exists, each is entitled to the benefits defined in this part.

(2) As described in section G., Appendix commanders of installations served by onbase credit unions shall ensure that installation activities do not disseminate literature from competing credit unions.

(c) *Establishing domestic credit union service.* (1) A demonstrated need for credit union services may be addressed by establishing a new full-service credit union or by opening a branch office or facility of an existing credit union under the common bond principle.

(2) Each DoD Component shall develop internal instructions, consistent with the following, that govern the submission and justification of requests to establish credit unions on respective installations.

(i) DoD personnel seeking to establish a new full-service credit union or a branch or facility of an existing credit union shall submit a proposal to the installation commander. Such proposals shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

(ii) The DoD Component shall notify credit unions that operate on DoD installations of the need for service; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and recommend for approval the designation of a credit union to the appropriate regulatory agency, providing an information copy to the DASD(MS). No specific NCUA approval is required for a federal credit union to open a branch office.

(iii) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(d) *Establishing overseus credit union service.* (1) When the installation (community) commander determines that credit union services are needed, the DoD Component headquarters may request an existing Defense credit union to establish a branch or facility. However, it must be recognized that the basic decision concerning such extensions of service rests with the credit union.

(2) In addition to the requirements stated in paragraph (c)(2) of this section, installation commanders shall provide the following information in support of requests to their DoD Component headquarters for overseas credit union service:

(i) In countries not presently served, a statement concurred in by the Unified Commander that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation, with any conditions imposed by the host-country identified.

(ii) The name and location of the nearest credit union branch or facility.

(iii) The distance between the installation and the nearest credit union branch or facility and the availability of any official or public transportation.

(iv) The number of DoD personnel in duty assignments that confine them to the installation, or who cannot obtain transportation (such as hospital patients).

(3) The DoD Component shall notify Federal credit unions that operate on DoD installations of this need; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and, after coordination with the DASD(MS), recommend designation of a particular credit union to the NCUA for approval.

(4) Recommendations to the NCUA shall include identification of the primary installation from which the proposed branch would operate and the geographical territory in which any additional branches, facilities, or mobile outlets would operate.

(5) No commitment may be made to a credit union regarding its proposal until the NCUA announces its selection. The DoD Component shall then notify the DASD(MS) of NCUA approval and arrange for operations to begin.

(e) *Operating agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and the onbase credit union.

(1) Each agreement shall be confined to basic relationships and mutual support activities and may not involve internal operations of the credit union. The installation commander shall agree to provide support as specified in this Instruction. A sample format is contained in DoD 4000.19-R.

(2) Each credit union operating on a DoD installation shall agree to:

(i) Comply with this part, DoD Directive 1000.11 and DoD Component regulations that implement these issuances;

(ii) Keep the installation commander advised of credit union operations;

(iii) Give the installation commander a copy of its monthly financial report and other local credit union publications;

(iv) Invite command representatives to attend its annual meetings and other appropriate functions;

(v) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component in any way caused by agents or employees of the credit union;

(vi) Maintain physical security of cash and negotiable items in a manner consistent with the requirements of the credit union's fidelity insurer. A copy of these requirements shall be provided to the installation commander upon request.

(vii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Credit union personnel invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution;

(viii) Provide that neither the DoD Component concerned nor its representatives shall be responsible for the financial operation of a credit union or for any expense, loss (including criminal losses), or claim for damages arising from credit union operations; and

(ix) Operate in accordance with the guidelines at Appendix and comply with other provisions of this part, with DoD Directive 1000.11, and with their DoD Component implementing regulations.

(f) *Liaison officers.* To maintain effective lines of communication, each commander of an installation with an onbase credit union shall appoint a credit union liaison officer as defined at enclosure 2 of DoD Directive 1000.11.

(1) The credit union liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase credit union location.

(2) The liaison officer shall maintain regular contact with the credit union manager to confer, help resolve member complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in the internal operations of the credit union.

(3) No one on the board of directors serving the credit union in another of-

ficial capacity may serve as the credit union or bank liaison officer.

(g) *Complaints processing*—(1) *Discrimination*. Any installation commander who suspects or receives complaints of discrimination by the onbase credit union shall try to resolve any such problem by negotiation. The installation commander should consider using the credit union's supervisory committee in resolving the complaint. Failing resolution, and in accordance with DoD Component implementing regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and local command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice*. The installation commander shall report to the appropriate regulatory agency any evidence suggesting malpractice by credit union personnel, in accordance with DoD Component regulations.

(3) *Follow-up*. A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DASD(MS). The DASD(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic support*—(1) *Membership criterion*. (i) In accordance with Section 124 of the Federal Credit Union Act, the provision of no-cost office space and other real property is limited to onbase credit unions with at least 95 percent of their membership composed of current or former military and Federal civilian personnel and their families. This percentage criterion applies to the total credit union membership, not just to members who use the onbase office.

(ii) At 3-year intervals and upon renewal of each no-cost lease or license, the credit union shall provide a written certification, prepared on credit union letterhead and signed either by its president or general manager, that the credit union continues to meet the 95 percent criterion. A certification also is required whenever there is a merger, takeover or significant change in a field of membership. This certification shall serve as justification and documentation for the continued allocation of free Government space, including space renovated or constructed with credit union funds.

(2) *Criteria for use of space in Government-owned buildings*. (i) A credit union may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods not to exceed 5 years, as prescribed in DoD Directive 4165.6. The cumulative total of space authorized at one or more locations is subject to the limitations contained in DoD 4270.1-M.

(ii) A credit union that fails to meet the 95 percent criterion shall be charged fair market rent for space provided. No credit union whose field of membership excludes any DoD personnel assigned on the installation shall receive free Government space. This latter limitation is waived in cases when an installation is served by more than one credit union.

(iii) All space assigned by the GSA, whether leased or in Federal office buildings, is reimbusable to the GSA at the standard level user charge under Pub. L. 92-313. Consequently, the GSA shall charge the benefiting DoD Component for any space assigned for credit union operations. Such space is then subject to the provisions of paragraph (h)(2) (i) and (ii) of this section.

(iv) When a credit union uses its own funds to expand, modify, or renovate Government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In this latter case, the no-cost permit shall be cancelled in favor of a lease immediately negotiated at fair market value under the provisions of paragraph (h)(2)(ii) of this section.

(3) *Utilities, base services, and equipment*. (i) When available, janito-

rial services, utilities (such as air-conditioning, heat, and light), fixtures, and maintenance shall be furnished at no cost to a credit union occupying free space in a Government building. The credit union shall pay for other services, such as telephone lines, long-distance calls and space alterations. Should a credit union fail to meet the 95 percent membership criterion, any logistic support furnished shall be on a reimbursable basis.

(ii) When available from local stock, typewriters, adding machines, other office equipment and office furniture may be leased to an onbase credit union at nominal cost, i.e., $1.00 per year, under authority of 10 U.S.C. 2667.

(iii) Central locator service shall be provided under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by Defense credit unions. This service shall be provided at no cost, in accordance with DoD Instruction 7230.7.

(iv) DoD Components shall provide debt processing assistance to Defense credit unions, in accordance with DoD Directive 1344.9, as limited by the Privacy Act Guidelines set forth in enclosure 3 of DoD Directive 1000.11. Unless otherwise prohibited, Defense credit unions seeking restitution for delinquent loans or dishonored checks may request the assistance of local commanders, credit union liaison officers, or other officials.

(v) DoD Components shall prescribe clearance procedures for departing military personnel which provide the onbase credit union with adequate notice of such membership changes. Clearance involves reporting a change of address, reaffirming allotments or notes payable and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the credit union and its departing members. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian employees.

(4) *Additional support in overseas areas.* In addition to the logistic support identified above, the following may be made available to Defense credit unions operating at overseas installations:

(i) Military postal service may be authorized, in accordance with DoD Directive 4525.6.

(ii) AUTOVON and AUTODIN may be provided on a case-by-case reimbursable basis.

(iii) Travel of U.S.-based credit union officials to their overseas offices shall be as set forth in DoD Directive 4000.6. Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(i) *Construction of credit union building.* (1) Credit union proposals to finance construction of buildings on domestic DoD installations at their own expense must be processed in accordance with DoD Instruction 7700.18. In support of each construction proposal, the credit union shall provide written assurance that:

(i) Management understands its potential loss of the building in the event of installation closure or other delimiting condition specified in paragraph (j)(1) of this section.

(ii) The proposed building will serve only the needs of the credit union and will not be used to house other activities; and

(iii) Management accepts financial responsibility and will reimburse the U.S. Government for all costs of construction and any maintenance, utilities and other services furnished. Rates shall be established per DoD Directive 4000.6 and confirmed by a written agreement between the DoD installation and the credit union; and

(2) Credit unions that finance building construction at their own expense do not have to meet the space criteria contained in DoD 4270.1-M.

(j) *Leases of Government land.* (1) Except as provided in paragraph (h)(iv) of this section land required for approved building construction at credit union expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or any other event cited in paragraph (l)(3) of this section, and at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition.

(2) When a credit union participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the credit union.

(3) When, under the terms of a lease, title to improvements passes to the Government, arrangements shall be made by:

(i) No-cost permit or license for the continued occupancy of those improvements by the credit union if it continues to meet the 95 percent membership criterion cited in paragraph (h)(1). When the square footage exceeds that authorized in DoD 4270.1-M, the credit union shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that space and associated maintenance of the premises and reimbursement for utilities and services furnished in accordance with DoD Directive 4000.6; or

(ii) Lease for continued occupancy of those improvements should the credit union no longer qualify under the 95 percent rule. The lease shall be at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and pay for utilities and services furnished in accordance with DoD Directive 4000.6.

(k) *Automated Teller Machine (ATM) Service.* (1) ATMs may be used to augment service provided by an onbase credit union.

(2) An onbase credit union that proposes to agument its service by installing one or more ATMs shall:

(i) Coordinate the ATM proposal through the installation commander under provisions of applicable DoD Component regulations;

(ii) Provide a statement that the cost of ATM installation and maintenance shall be borne by the credit union alone or in conjunction with other financial institutions; and

(iii) Provide for access through debit transaction cards, rather than restricting access to holders of a financial institution's credit cards.

(3) Before service begins, regulatory agency approval, as necessary, must be obtained, and leases must be negotiated in accordance with this Instruction.

(i) No lease is needed to site an ATM within an existing credit union office.

(ii) When a credit union requests up to 100 square feet of additional floor space in an existing structure and the credit union agrees to bear all expenses for modifying the structure, a lease providing for an annual rental fee of $1.00 shall be locally negotiated and approved. This lease provision also shall be offered if a credit union requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the charge for any maintenance, utilities and services shall be consistent with that applied to the onbase credit union office.

(iii) Leases pertaining to other situations shall be negotiated in accordance with paragraph (h)(2) and paragraph (i) of this section.

(l) *Termination of credit union service*—(1) *Termination of operations by the credit union.* An onbase credit union planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the credit union to continue operation until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of credit union services is justified, action to establish another credit union shall comply with paragraph (c) or (d) of this section.

(2) *Termination for cause.* If, after discussion with credit union officials, the installation commander determines that the operating policies of

the credit union are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. A credit union shall be removed from the installation only with approval by the DoD Component headquarters, after coordination with the DASD(MS) and the appropriate regulatory agency.

(3) *Termination in interest of national defense.* At the option of the Government, leases may be terminated in the event of national emergency or as a result of installation inactivation, closing or other disposal action.

APPENDIX—OPERATIONS OF DEFENSE CREDIT UNION

A. Staffing

1. Full service shall be provided by onbase credit unions that are staffed by:

a. A loan officer authorized to act for the credit committee,

b. An individual authorized to sign checks, and

c. A qualified financial counselor available to serve members during operating hours.

2. Exceptions to A.1., above, may be approved by the DoD Component concerned in the case of newly organized credit unions.

3. When an onbase credit union can support only minimum staffing, one of the other positions required in A.1., above, may be subsumed under the counselor duties.

4. Remote service locations at the same installation may be staffed with one person alone, provided that a direct courier or message service links them to the credit union's onbase main office.

5. All staffing shall fully comply with the spirit and intent of DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1100.15.

6. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase credit union. However, off-duty DoD personnel may be employed by a credit union if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

B. Counseling

Members of Defense credit unions shall have access to free counseling service. Members (particularly youthful or inexperienced personnel and young married families) shall receive help in budgeting and solving financial problems. Military members in junior enlisted grades who apply for loans shall receive special attention.

C. Lending

1. In accordance with accepted credit union practice, lending policies are expected to be as liberal as possible while remaining consistent with the best interests of the overall credit union membership. Credit unions must strive to provide the best possible service to all members.

2. Defense credit unions evidencing a policy of discrimination in their loan services are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in § 231a.5(g)(1).

3. Defense credit unions shall conform to the Standards of Fairness principles set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase credit union branch refer a prospective borrower to an offbase office of the same credit union, it shall advise the latter office that the Department of Defense requires compliance with the Standards of Fairness.

D. Hours of Operation

Onbase credit unions may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Credit unions should set operating hours that meet the needs of all concerned. ATMs may be used to provide expanded service and operating hours.

E. Share Insurance

Credit unions serving on DoD installations must maintain adequate share insurance. Any share insurance that is at least equal to that required by the NCUA for Federal credit unions may be obtained through the NCUA, a State-sponsored insurance program, or a private insurance plan to satisfy this requirement. A credit union not maintaining share insurance shall be suspended from onbase operations.

F. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through Defense credit unions.

1. The credit union shall credit member accounts not later than the value date of allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the credit union member. Allotments voluntarily consigned to a credit union shall continue at the option of the member.

G. Advertising

1. Advertising of onbase credit union services shall be in accordance with policies set forth in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited, with the exception of inserts in the *Stars and Stripes* overseas.

3. DoD Instruction 5120.20 precludes use of the Armed Forces Radio and Television Service to promote a specific credit union.

4. Onbase credit unions may use the unofficial section of the installation daily bulletins, provided space is available, to inform DoD personnel of financial services and announce membership meetings, seminars, consumer information programs, and other matters of broad general interest. Announcement of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

5. Defense credit unions may use onbase information bulletin boards for announcements of membership meetings and promotional materials generally complementing the installation's financial counseling and thrift promotion programs. Onbase credit unions may, with moderation, use installation message center services to distribute announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installation, to include military exchange outlets or concessionaires, shall not permit the distribution of competitive literature from other credit unions at locations served by onbase credit unions. This does not preclude a credit union from using a direct mail approach to serve its field of membership or commercial advertising in another credit union's area.

H. Overseas Operations

1. An overseas credit union branch or facility shall be limited to onbase operations. It shall confine its field of membership to individuals or organizations eligible by law or regulation to receive services and benefits from the installation, not precluded from receiving these services by intergovernmental agreement or host-country law.

2. Credit unions serving overseas shall have a prescribed territorial franchise. However, any credit union may continue to serve its members stationed overseas by direct mail.

3. Any proposal for a new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to ensure that it does not conflict with status of force agreements or host-country law.

4. Credit unions may purchase *foreign* currency from the servicing military banking facility (MBF) at the bulk rate when used for internal vendor of payroll payments. The rate of exchange for sales to individuals must be no more favorable than that available from the MBF, in accordance with DoD Directive 7360.11.

5. Overseas credit unions operating in military payment certificate areas shall comply with DoD Instruction 7360.5 and any DoD Component regulations implementing that Instruction.

6. In accordance with NCUA rules and regulations, no credit union loans may be made for the purpose of purchasing real property or purchasing or erecting any type of residence in any country outside the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

7. The recommendations and direction of the NCUA through its rules, regulations, procedural forms, reports, and manuals directly apply to all Defense credit union branches and facilities operating overseas.

8. Funds shall be deposited and invested in accordance with the authority applicable to federal credit unions. Overseas Defense credit union branches and facilities shall deposit funds in accordance with instructions issued by the NCUA, giving full consideration to using the servicing MBFs.

9. Operation of overseas Defense credit union branches and facilities shall be reviewed by the NCUA during examination of the parent credit union or as the NCUA determines necessary.

I. Notification of Credit Unions

Each DoD Component shall ensure that every credit union with an office at its installations receives a copy of the document that implements this part and DoD Directive 1000.11.

PART 232—NATURAL RESOURCES; FISH AND WILDLIFE MANAGEMENT

Sec.

232.1 Purpose.
232.2 Applicability and scope.
232.3 Fish and wildlife management program procedures.
232.4 Section 2671, Chapter 159, Title 10, United States Code.
232.5 Pub. L. 797, 86th Congress.
232.6 Reporting requirements.
232.7 Format to be followed in the preparation of a cooperative plan (agreement) for the conservation and development of fish and wildlife resources on military reservations.

AUTHORITY: 10 U.S.C. 2671, 74 Stat. 1052; 16 U.S.C. 670a-670o.

SOURCE: 30 FR 14903, Dec. 2, 1965, unless otherwise noted.

§ 232.1 Purpose.

This part establishes a program for fish and wildlife management, implements the provisions of 10 U.S.C. 2671 and Pub. L. 797, 86th Congress, and states the reporting requirement in compliance with Part 263 of this chapter.

§ 232.2 Applicability and scope.

The provisions of this part apply to all DoD members and components and cover military installations and facilities located in the United States containing land and water areas suitable for conservation and management of fish and wildlife resources. Fish and wildlife management will be integrated with other natural resources activities into a balanced multiple-use program.

§ 232.3 Fish and wildlife management program procedures.

(a) *Programming, budgeting, and financing.* Policy covering programming, budgeting, and financing is contained in Part 263 of this chapter.

(b) *Installation management plans.* (1) Management plans will be executed for all military installations which contain land and water areas suitable for the conservation and management of fish and wildlife resources and will be made part of the installation master plan.

(2) All installations and facilities shall give consideration to the improvement and conservation of fish and wildlife resources, including aspects of natural beauty during the planning and development stages of authorized projects and programs.

(3) The Installation Conservation Committee will annually review the management plan for currency, amendments or revisions, as applicable.

(c) *Fish management.* (1) Habitat control and improvement should serve as the basic means of perpetuating and improving the fisheries resources. Introduction of fish to new waters (e.g. new ponds) or the reintroduction of desirable species to waters which have been cleared of old stock as a management technique or by severe pollution kills will be done upon the advice and guidance of the appropriate State or Federal natural resource officials.

(2) Where waters are suitable for game fish, they should be managed within ecological limits to produce the most desirable of the game species, in best size and number. Streams whose values for such fish have been destroyed by the activities of man should be rehabilitated to the extent possible.

(3) The utmost care and caution should be exercised in introducing foreign, or exotic, species and only after approval of the appropriate State or Federal natural resource officials.

(d) *Wildlife management.* (1) Habitat control and improvement should serve as the basic tool of wildlife management. Artificial stocking should not be regarded as a major management technique except in special cases, and then, only upon the advice and guidance of appropriate State or Federal natural resource officials.

(2) Utmost caution, in the form of thorough scientific investigations and State or Federal cooperation, should be exercised in the introduction of wildlife species into areas to which they are not native.

(3) All precautions and measures necessary shall be made to prevent the extermination of any species of wildlife.

(4) Measures for the control of predators must be authorized and approved by qualified State or Federal officials. Scientific research has shown that there is no valid justification for the widespread destruction of animals classed as predators. Control of animals which are proved to be undesirable in specific instances is recognized.

(5) Wetlands valuable for waterfowl and other wildlife purposes shall be preserved wherever possible.

§ 232.4 Section 2671, Chapter 159, Title 10, United States Code.

(a) Hunting, fishing, and trapping at each military installation or facility under the jurisdiction of any military department in a State will be in accordance with the fish and game laws of the State in which it is located.

(b) At each installation or facility appropriate State licenses for hunting, fishing, or trapping on that installation or facility will be obtained, except that with respect to members of the Armed Forces such a license may be required only if the State authorizes the issuance of a license to a member on active duty for a period of more than thirty (30) days at an installation or facility within that State without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State. (The clause "for a period of more than thirty (30) days" indicates eligibility for an individual when first physically present for duty on such orders.)

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under paragraph (a) or (b) of this section, which act or omission would be punishable if committed or omitted within the jurisdiction of the State in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to like punishment.

§ 232.5 Public Law 797, 86th Congress.

(a) *Cooperative plans.* In compliance with Public Law 797, 86th Congress, the Departments of Defense and Interior have developed a model cooperative plan (Agreement) (§ 232.7), designed to carry out a program of planning, development, maintenance, and coordination of fish and wildlife conservation and rehabilitation in the military reservations. Under the terms of the cited statute, appropriate commanders:

(1) May, if agreeable to the signators to the cooperative plans, issue special state permits to individuals for hunting, fishing, or trapping on that installation or facility, and require the payment of a nominal fee therefor. Such fees are to be utilized on the installation from which collected for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities, as may be stipulated in the cooperative plan, but for no other purpose. Such fees as may be collected under the above cited Act will be accounted for and reported in accordance with instructions of the Office of the Assistant Secretary of Defense (Comptroller) under a special indefinite fund established by the Department of the Treasury for each military department, and entitled "Wildlife Conservation, etc., Military Reservations," symbol—X5095. (The liberal use of this provision is encouraged to provide vital program funds.)

(2) Will ascertain that the cooperative plan provides that the possession of a special permit for hunting migratory game birds shall not relieve the permittees of the requirements of the Migratory Bird Hunting Stamp Act, as amended, nor of the requirements pertaining to state law, as described in § 232.4.

(b) *Execution of cooperative plans.* Cooperative plans (§ 232.7) will be executed for all military installations which contain land and water areas suitable for the conservation and management of fish and wildlife and other natural resources. Suitability shall be determined after consultation with the Regional Director of the U.S. Fish and Wildlife Service, and the Director of the Fish and Game Department of the State in which the installation is located, or other official as designated by the Governor of the State concerned. Military departments will maintain current copies of all negotiated cooperative plans for installations under their control.

§ 232.6 Reporting requirements.

(a) *Definitions*—(1) *Category I.* Installations which are classified as having land and water areas suitable for the conservation and management of fish, wildlife and other natural resources, such suitability having been determined after consultation with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the State official designated by the Governor of the State concerned, as prescribed in § 232.5(b).

(2) *Category II.* Installations for which a final decision is pending as to program suitability within the meaning of paragraph (a)(1) of this section.

(3) *Category III*. Installations which are finally classified, due to lack of adequate land or water areas, as unsuitable for a program of conservation and management of fish and wildlife and other natural resources, such classification being determined after the consultation prescribed in paragraph (a)(1) of this section.

(4) *Category IV*. Installations which obviously do not have land or water areas (e.g., recruiting centers, armories, cemeteries, hospitals, city office building headquarters, etc.) which would provide the program potential for the conservation and management of fish and wildlife and other natural resources within the meaning of Part 263 of this chapter.

(b) *Specific reports required*. A report for each fiscal year will be submitted by each Military Department to the Assistant Secretary of Defense (Manpower) (ASD (M)) not later than September 1 for each installation and facility in the United States.

(1) Category I & II Reports:

(i) Category I installations will complete Format B.

(ii) Category II installations will complete applicable portions of Format B.

(2) Military Departments will forward:

(i) Two (2) copies of Format B for each Category I & II installation.

(ii) Two (2) copies of the Summary Report in accordance with Format C.

(3) Category III & IV Reports: Installations classified as Category III & IV in the initial listings are considered as completed submissions. Subsequent submissions should be listed alphabetically by states and only cover additions and/or deletions.

§ 232.7 Format to be followed in the preparation of a cooperative plan (agreement) for the conservation and development of fish and wildlife resources on military reservations.

(a) Citing of authority: In accordance with the authority contained in Pub. L. 85-337, approved February 28, 1958, and in Pub. L. 86-797, approved September 15, 1960, the Department of Defense, the Department of the Interior, and the State of ——, through their duly designated representatives whose signatures appear below, approved the following cooperative plan for the protection, development, and management of fish and wildlife resources on

(Military Base)

(b) The cooperative plan will include the following features and provisions:

(1) Provide for a general inventory review of fish and wildlife resources to be made at the earliest practical time with representatives of all three agencies participating and when completed to be attached and made a part of this agreement. (Objectives: Such an inventory should locate principal land and water areas suitable for fish and wildlife. The inventory should list the principal species of wildlife, condition of their range, and include any data on population numbers. Water areas should be described briefly as to location, type, and acreage, with principal fish species known to be present, and with general observations on the quality of the aquatic habitat. The inventory should provide information on restricted and public use areas existing at that time. It should set forth the potential for the development of fish and wildlife resources).

(2) The cooperative plan should set forth, where applicable, a program for research and further development and management of fish and wildlife resources to include the following:

(i) Development and improvement of habitats for optimum conditions and in keeping with base objectives.

(ii) Need for and means of accomplishing restoration or restocking of desired species.

(iii) Need for and means of accomplishing control of plant and animal species, as may be indicated.

(iv) Plans for the protection of fish and wildlife resources.

(3) The cooperative plan will describe the extent of public participation in the harvest of fish and game commensurate with military objectives and should outline general procedures for the operation of such programs.

Filed as part of original document.

(4) The cooperative plan should specify under what circumstances special State fishing and hunting permits are to be required, the fees to be charged, and procedures for their issue. The plan should specify the fish and game management items for which the money may be spent, the method of relating this income to expenditures.

(5) The cooperative plan will specify the agency or agencies to provide technical advice and assistance to the Defense Department in fishery management and in wildlife management, either separately or together, and to what extent.

(6) The cooperative plan will be in full force upon its adoption, and subject to later amendment or revision as agreed upon by all parties represented. Request for amendment or change of the plan may originate with any one of the parties concerned.

(7) Signators to the cooperative plan will be the installation commander, the Regional Director, Bureau of Sport Fisheries and Wildlife, and the Regional Director, Bureau of Commercial Fisheries, as appropriate; and the Director of the State Fish and Game Department, or other official designated by the Governor of the State concerned.

PART 233—NATURAL RESOURCES; FOREST MANAGEMENT

Sec.

233.1 Purpose.
233.2 Applicability and scope.
233.3 Forest management program procedures.
233.4 Record-keeping requirement.

AUTHORITY: R.S. 161; 5 U.S.C. 301.

SOURCE: 30 FR 14905, Dec. 2, 1965, unless otherwise noted.

§ 233.1 Purpose.

This part prescribes the procedures for a forest resource management program, and sets forth the content of the report required in the administration of Part 263 of this chapter.

§ 233.2 Applicability and scope.

The provisions of this part apply to all Department of Defense (DoD) members and components and cover installations and facilities located in the United States containing forest areas. Forest resource management will be a specific technical program integrated with other natural resource activities to make a balanced multiple-use program.

§ 233.3 Forest management program procedures.

(a) *Programing, budgeting, and financing.* Policy covering programing, budgeting, and financing is contained in Part 263 of this chapter.

(b) *Forest resource management plan.* Technical management plans will be established and maintained on all military installations which contain land areas suitable for forest resource management programs and will be a separate part of the installation natural resource management plan (master plan). Such plans will be developed with the aid and assistance of Federal or State Forestry agencies as appropriate. Forest resource management plans should consider:

(1) Timber area access roads.

(2) Management of soil, water, fish, wildlife, watersheds, and enhancement of natural beauty and recreation values.

(3) Natural and artificial regeneration of desirable forest tree species.

(4) Protection against wild fires, injurious insects and diseases.

(5) Prompt salvage disposal of dead or dying timber.

(6) Scheduled harvest in accordance with appropriate technical standards and guides.

(7) Planning of the scheduled cut to achieve (i) optimum utilization of current and future markets, and (ii) desirable composition of the residual stands.

(8) Necessary cultural treatments.

(c) *Definition.* "Sustained-yield" means continuous production under forest management of timber products and related natural resource values such as natural beauty, watershed protection, wildlife, and recreation.

(d) *Timber production.* (1) The optimum use of forests for sustained yield production involves:

(i) The accumulation of forest resource data required for scientific management of the forest area.

(ii) Harvesting on a sustained yield basis so as to achieve periodic harvest of the allowable cut of timber from Defense lands.

(iii) Silviculture—the use of management practices that affect the composition and growth of forests such as improvement cuttings, thinnings, and other cultural practices to forestall mortality losses, obtain more complete utilization, and improve quality.

(2) Silvicultural treatment and game management practices such as seeding or planting fire lanes, establishment of small woodland openings, and edge development introduce desirable cover variations to forest areas. Such variations are deterrents to the build-up of destructive insect populations and will be logically considered as timber production measures.

(3) Timber production and forest recreation can be compatible uses in an area but some adjustment in both activities may be required to obtain maximum potential.

(4) Timber and water are products of a well managed forest program protecting the watershed and contributing to the yield of usable water.

§ 233.4 Record-keeping requirement.

Each Military Department will establish a record-keeping system suitable for management purposes and maintain at departmental level management information to include, as a minimum, the information contained in Enclosure 1, updated on an annual basis.

PART 234—NATURAL RESOURCES; SOIL AND WATER MANAGEMENT

Sec.

234.1 Purpose and applicability.
234.2 Definitions.
234.3 Objective.
234.4 Soil and water management program procedures.
234.5 Project proposals and construction.
234.6 Program evaluation.
234.7 Record keeping requirement.
234.8 Delineation of responsibilities.

AUTHORITY: R.S. 161, 5 U.S.C. 301.

SOURCE: 30 FR 14905, Dec. 2, 1965, unless otherwise noted.

§ 234.1 Purpose and applicability.

(a) *Purpose.* This part prescribes procedures for implementing a balanced and integrated program for soil and water management and related natural resources as required by Department of Defense (DoD) Directive 4165.2, "Objectives and Policies Relating to Real Property Maintenance and Utilities Operation Program," October 15, 1954, and Part 263 of this chapter.

(b) *Applicability and scope.* The provisions of this part apply to all DoD members and components and cover the conservation and management of the natural resources and related programs, projects, or instruments involving land, grounds, or water areas.

§ 234.2 Definitions.

(a) "Grounds" are defined as all land areas not occupied by buildings, structures, pavements, and railroads. Grounds at military installations are grouped in three categories, in accordance with the intensity of maintenance required.

(b) "Improved grounds" are areas on which intensive development and maintenance measures are performed. This category usually applies to areas within the built-up section of an installation which contain lawns and landscape development, parade grounds, drill fields, athletic facilities, cemeteries, golf courses (excluding roughs), and similar areas.

(c) "Semi-improved grounds" are areas on which periodic recurring maintenance is performed but to a lesser degree than on improved grounds. This category includes airfields, small arms ranges, ammunition storage and similar areas.

(d) "Unimproved grounds" are all other areas not included in the above categories.

§ 234.3 Objective.

The objective is to conserve, develop, maintain, and manage all lands under military jurisdiction in accordance with proven scientific methods, procedures, and techniques to facilitate

---

Format A (Enclosure 1) filed as part of original document.

military operations; protect real estate investments from depreciation; remove or screen unsightly debris and landscape blemishes; cooperate in pollution abatement and waste disposal; protect and improve the beauty of the natural landscape; and enhance the appearance of buildings through appropriate landscaping as stated in the Message of the President to the Congress, February 8, 1965 (H.R. Doc. 78, 89th Cong., 1st Sess.).

§ 234.4 Soil and water management program procedures.

(a) *Programing, budgeting, and financing.* Policy covering programing, budgeting, and financing is contained in Part 263 of this chapter.

(b) *Plans*—(1) *Soil and water conservation (land management) plan.* These plans shall be developed by professionally competent personnel and applied continuously for all installations (active and inactive) having significant land management problems or responsibility. The plans shall: provide an inventory of important increments of land use; and describe recommended methods, procedures, techniques, materials, and personnel required for development, improvement, maintenance of grounds and other soil and water conservation and management practices. Special problems of conservation and development of natural resources will be identified and included as a part of the plan.

(2) *Landscape development.* Landscape development work shall be in accordance with an approved landscape development plan. Such plans shall be functional in nature; simple and informal in design, compatible with the adjacent surroundings and enhance the overall natural beauty of the area as stated in the Message of the President to the Congress, February 8, 1965 (H.R. Doc. 78, 89th Cong., 1st Sess.).

(3) *Fire prevention.* The plan shall incorporate necessary fire prevention and suppression measures essential for conservation and protection of natural resources and other assets. These measures shall be applied continuously and shall be coordinated with Federal, State, county, municipal, or other community agencies, as appropriate.

(4) *Outleased land.* Appropriate natural resources conservation plans, including outdoor recreation, shall be developed for outleased lands and shall be incorporated as an integral part of the contract specifications.

(c) *Management and maintenance of grounds*—(1) *Improved grounds.* Lands in this category shall be maintained at the levels and intensities necessary to meet designated use criteria, protect the natural resources, and insure a pleasing appearance in harmony with the natural landscape. Appropriate measures shall be taken to beautify buildings through the planting of trees, flowers, and shrubs. Priority shall be given to appropriate landscaping of buildings located adjacent to, or within urban areas, and areas adjoining public thoroughfares as stated in the Message of the President to the Congress, February 8, 1965 (H.R. Doc. 78, 89th Cong., 1st Sess.).

(2) *Semi-improved grounds.* Lands in this category shall be maintained at a lesser degree of intensity than for improved grounds but at a level that will enhance natural beauty, insure conservation of the natural resources, reduce vegetative fire hazards, and meet the criteria for its designated use.

(3) *Unimproved grounds.* Lands in this category shall be developed and maintained at a level which will enhance natural beauty as stated in the Message of the President to the Congress, February 8, 1965 (H.R. Doc. 78, 89th Cong., 1st Sess.), and conserve natural resources including beneficial vegetative cover, as well as prevention and suppression of fires.

(4) *Special ground cover.* In arid areas where rainfall is insufficient to support vegetative growth, crushed rock, gravel, or other similar material will be used where required to prevent wind and water erosion at, or contiguous to, important facilities.

(d) *Management and maintenance of billboards and signs.* (1) Signs as a means of communication in the outdoor environment are necessary guides to destinations, safety reminders, warnings, and to identify boundaries and activities. The placement and maintenance of necessary outdoor billboards, signs, displays, and devices under DoD control will be in harmony with the surrounding landscape in a manner consistent with Federal policy and to "preserve natural beauty" (reference (e)).

(2) Advertising and promotional type signs, including recruiting signs, are prohibited where they tend to interfere with the beauty or general appearance of rural and residential areas and will be erected on roads and highways only with the permission and cooperation of cognizant Federal, State, and local authorities. (Exceptions to the foregoing are granted until Nov. 1, 1966, for existing commitments and free space already granted.)

(3) "A" frame type signs placed on sidewalks and in or near Federal and commercial buildings may continue to be placed in such locations in accordance with traditional recruiting practices if approved by the local authorities.

(4) Signs in a common zone should be complementary in theme and design and in specific areas, planned for at one time to prevent duplication, conflict, and omissions. Once placed, signs must be kept as near to original specifications as possible through scheduled maintenance and replacement.

(e) *Irrigation.* (1) Irrigation shall be limited to areas where supplemental water is essential to establish lawns and other improved types of vegetation. Underground irrigation systems will be designed to assure the use of the most efficient and economical system and equipment. The amounts of irrigation shall be limited to that necessary to meet minimum requirements to support the vegetation in an acceptable condition. Frequency of application of irrigation water shall be in accordance with the installation water conservation program and shall not interfere with the military and domestic water supply requirements.

(2) Prior to installing an underground irrigation system, the need should be justified on an economic basis including the initial cost and amortization of maintenance and operation costs.

(f) *Training.* Each Military Department will provide for periodic and comprehensive technical instruction and training of personnel to insure efficient development, management, and maintenance of grounds, the adoption of adequate safeguards in the handling of toxic materials and use of equipment, and prompt introduction of new and improved materials and methods. The frequency, scope, and method of training will be determined by each Military Department. Training and certification of personnel who store, mix, and apply pesticides, including herbicides, will be in accordance with DoD Instruction 4150.7, "Pest Control Operations at Military Installations," July 23, 1964.

(g) *Weeds and poisonous plants.* Poisonous plants and noxious weeds shall be controlled or destroyed in accordance with approved practices and applicable laws when they interfere with safe and efficient land use, endanger the health and welfare of personnel, or constitute a source of weed infestation to adjacent property.

[30 FR 14905, Dec. 2, 1965, as amended at 31 FR 6547, Apr. 30, 1966]

§ 234.5 Project proposals and construction.

Soil problems, water management, runoff disposal and plantings or landscaping requirements shall be fully considered in all site feasibility studies and in project planning, design and construction. When required, the scope of the conservation work and funds involved shall be included as an essential item in the project proposals, and construction contracts and specifications.

§ 234.6 Program evaluation.

Each Military Department will establish a suitable schedule of surveillance to evaluate the effectiveness of this program and provide on-site technical consultant services to its major commands.

§ 234.7 Record-keeping requirement.

Each Military Department will establish a record-keeping system suitable for management purposes and maintain at departmental level management information to include, as a minimum, the information contained

in Enclosure 1.[1] updated on an annual basis.

§ 231.8 Delineation of responsibilities.

(a) Pursuant to DoD Directive 4165.2, "Objectives and Policies Relating to Real Property Maintenance and Utilities Operation Program," October 15, 1954, the Assistant Secretary of Defense (Installations and Logistics) (ASD (I&L)) is responsible for maintenance of grounds and the administration and management of the grounds programs, including policies, procedures, controls, and beautification.

(b) Pursuant to Part 263 of this chapter the Assistant Secretary of Defense (Manpower) (ASD(M)) is responsible for soil and water management policy guidance and administration as it relates to multiple-use of the renewable natural resources including conservation and natural beauty.

(c) The ASD (I&L) and the ASD (M) will coordinate and resolve any differences on any phase of the soil and water management program which cannot be solved at the Military Department/Defense Agency level. This will include, as appropriate, referral for recommendation to the DoD Natural Resources Group.

PART 235—MINERAL EXPLORATION AND EXTRACTION ON DoD LANDS

Sec.

235.1 Purpose.
235.2 Applicability and scope.
235.3 Definitions.
235.4 Policy.
235.5 Responsibilities.
235.6 Procedures.
235.7 Summary of mineral leasing authorities.

AUTHORITY: 30 U.S.C. 21a, 22, 181 *et seq.*, 351 *et seq.*, 601 *et seq.*, 1001 *et seq.*, 1601 *et seq.* 40 U.S.C. 471, 43 U.S.C. 155 *et seq.*

SOURCE: 48 FR 48824, Oct. 21, 1983, unless otherwise noted.

§ 235.1 Purpose.

Under 30 U.S.C. 21a, 22, 181 *et seq.*, 351 *et seq.*, 601 *et seq.*, 1001 *et seq.*, and 1601 *et seq.*, 40 U.S.C. 471, and 43 U.S.C. 155 *et seq.*, this rule establishes policy, assigns responsibilities, and provides procedures for making DoD lands available for mineral exploration and extraction.

§ 235.2 Applicability and scope.

(a) This Directive applies to the Office of the Secretary of Defense and the Military Departments (including their National Guard and reserve components).

(b) It applies to DoD-controlled lands acquired or withdrawn from the public domain (including Army civil works lands) within the United States and its territories and possessions for which the mineral rights are owned by the United States, with the following exceptions:

(1) Mineral leasing of lands situated within incorporated cities, towns, and villages (30 U.S.C. 351 *et seq.* and 181 *et seq.*).

(2) Mineral leasing of tidelands or submerged lands (30 U.S.C. 351).

(3) Certain hardrock minerals known as locatables (30 U.S.C. 22).

(4) A class of minerals composed of sand and gravel known as saleables (30 U.S.C. 601 *et seq.* and 41 CFR 101-47.302-2).

§ 235.3 Definitions.

(a) *Leasable Minerals.* Minerals, such as oil and gas, that are owned by the United States and that have been authorized under statute as potential minerals for extraction under a mineral lease (30 U.S.C. *et seq.*, 181 *et seq.*, and 1001 *et seq.*

(b) *Locatable Minerals.* Minerals, such as gold and silver, that are owned by the United States, that are on public domain lands, that are subject to discovery and claim, and that are not leasable or saleable (30 U.S.C. 22).

(c) *Mineral Lease.* A grant of a right to explore for and extract leasable minerals. No surface occupancy, drilling, or other mineral extraction is permitted until an operations plan is approved by the DoI in consultation with the Military Department concerned.

(d) *Multiple-Use Principle.* The integrated management of all resources, each with the other, to achieve their optimum use and enjoyment while maintaining environmental and other qualities in balance.

---

[1] Filed as part of original document.

(e) *Permit.* Temporary permission to conduct seismic or other geological and geopohysical tests before requesting a mineral lease.

(f) *Saleable Minerals.* Common variety minerals, such as sand, clay, and gravel, that are sold under certain statutory authorities (30 U.S.C. *et seq.* and 41 CFR 101-47.302-2

§ 235.4 Policy.

In accordance with established DoD policy to promote optimal use of real property under the multiple use principle (DoD Directive 4700.1), DoD lands shall be made available for mineral exploration and extraction to the maximum extent possible consistent with military operations, national defense activities, and Army civil works activities.

§ 235.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall:

(1) Have primary responsibility for developing DoD policy for mineral exploration and extraction on DoD lands.

(2) Ensure that the Military Departments issue regulatory documents implementing this Directive.

(b) The *Secretaries of the Military Departments* shall:

(1) Review and approve or disapprove requests from the Department of the Interior (DoI), the federal mineral leasing agency, to lease DoD lands under 43 U.S.C. 155 *et seq.* and DoD Directive 5160.63.

(2) Issue regulatory documents implementing this Directive to prescribe procedures relating to the issuance of permits and leases and the approval of plans of operations for mineral exploration and extraction.

(3) Formulate a system for maintaining records of land status to assist the DoI in mineral leasing. This system shall be established in accordance with DoD Directive 5000.11 and shall use existing standard data elements from DoD 5000.12-M, whenever possible.

§ 235.6 Procedures.

(a) If a Military Department cannot consent to exploration or extraction, it also may not approve testing or leasing. Exclusion of lands from exploration and extraction shall be justified and supported. Availability of lands is subject to certain conditions and stipulations that also shall be justified. Granting approval for leasing usually shall be construed as consent ultimately to allow drilling or other forms of mineral extraction. Accordingly, initial approval clearly shall indicate the conditions, if known, under which further exploration or extraction shall be allowed. For example, classified operations, ammunition and explosives operational storage requirements, and contaminated lands may restrict or exclude leasing or may require no surface disturbance stipulations (DoD 5154.4-S).

(b) The Military Departments may issue permits to parties interested in conducting seismic or other geophysical tests on DoD lands. In unusual circumstances, the Military Departments may refer permit applications to the DoI for issuance. Permits are subject to the approval of, and conditions imposed by, the Military Department concerned. The issuing agency shall make any required environmental and cultural studies. For permits issued by the DoI, the Military Department concerned shall provide, upon request, environmental and cultural information held by the Department.

(c) *Leases.* The DoI receives and processes all mineral lease requests and then forwards such lease offers and title report requests to the Military Department concerned. The Military Department then shall decide whether and under what conditions its land may be made available for leasing.

(1) *Environmental and Cultural Considerations for Leases.* As the lead agency, the DoI obtains all environmental and cultural documentation before deciding to lease. The responsibilities of the Military Department concerned, when acting as a cooperating agency, shall be limited to providing to the DoI, upon request, any available environmental and cultural information.

(2) *Title Search.* The Military Department concerned shall furnish to the DoI available information for acquired lands. DoI title records shall be

relied upon for withdrawn public domain lands, except that the Military Departments shall identify all outstanding interests, such as easements and licenses. When title information is incomplete, the Military Department shall so advise the DoI.

(3) *Plans of Operations.* After the lease is executed, the lessee submits a plan of operations (Application for Permit to Drill for oil and gas or Mining Plan for other minerals) to the DoI for technical review and coordination with the Military Department concerned. As a cooperating agency, the Military Department shall supply appropriate stipulations; available environmental, endangered species, and cultural information; and concurrence with the plan. The DoI then formalizes the environmental considerations and approves the plan with the stipulations supplied by the Military Department. Stipulations shall be tied directly to the details of the proposed plan of operations, and each stipulation shall be objectively justifiable.

(4) The DoI has the responsibility for the collection and disposition of proceeds derived from mineral leasing.

§ 235.7 Summary of mineral leasing authorities.

(a) 30 U.S.C. 351 *et seq.* authorizes leasing of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfer within acquired DoD lands. 30 U.S.C. 181 *et seq.* authorizes leasing of coal, phosphate, sodium, oil, oil shale, native asphalt, solid or semi-solid bitumen, and bituminous rock or gas within DoD-withdrawn public domain lands under certain conditions and in certain places. Under the leasing statutes, the Secretary of the Interior is responsible for granting and administering such leases. 30 U.S.C. 101 *et seq.* authorizes the Secretary of the Interior to issue leases for development of geothermal steam and associated resources on public lands. This includes public lands withdrawn for use by the Military Departments.

(b) 30 U.S.C. 351 *et seq.* specifically provides for consent of the head of the executive department having jurisdiction over the lands containing the mineral deposit before leasing. For public domain lands withdrawn for use of the Department of Defense 43 U.S.C. 155 *et seq.* provides that there will be no disposition of or exploration for minerals on public domain lands when the Secretary of Defense, in consultation with the Secretary of the Interior, determines that such disposition or exploration is inconsistent with the military use of the land.

PART 236—BASIC REGULATIONS IN THE MILITARY SUPPLY SYSTEM

Sec.

236.1 Policy.
236.2 Responsibilities.

AUTHORITY: 10 U.S.C. 2202.

SOURCE: 33 FR 2565, Feb. 3, 1968, unless otherwise noted.

§ 236.1 Policy.

(a) All Department of Defense Directives and Instructions which deal with procurement, production, cataloging, standardization, warehousing, distribution, maintenance, disposal, transportation of supplies or equipment, or related supply management or traffic management functions are regulations prescribed by the Secretary of Defense in compliance with Title 10, United States Code, section § 2202.

(b) All regulations, procedures, and instructions of the Military Departments and all other Department of Defense Components dealing with the subject enumerated in paragraph (a) of this section shall have the force and effect of regulations prescribed by the Secretary of Defense in compliance with 10 U.S.C. 2202 to the extent that they are not inconsistent with Department of Defense Directives and Instructions.

§ 236.2 Responsibilities.

The principal staff assistants to the Secretary of Defense, within the scope of the functions assigned to them by law or by directive of the Secretary of Defense, shall be responsible for monitoring and reviewing the implementation of 10 U.S.C. 2202, including the maintaining of such records and the making of such reports to the Secretary of Defense as may be necessary to keep him informed of progress in its implementation.

PART 237—COMMUNITY RELATIONS

Sec.
237.1 Reissuance.
237.2 Purpose and application.
237.3 Terms.
237.4 Policy.
237.5 Responsibilities and authorities.
237.6 Records and reports.
237.7 Glossary of terms.
237.8 Semiannual DoD community relations report.

AUTHORITY: R.S. 161; 5 U.S.C. 301.

SOURCE: 31 FR 10677, Aug. 11, 1966, unless otherwise noted.

§ 237.1 Reissuance.

This part combines previous issuances on Department of Defense community relations policy and the use of Armed Forces personnel, facilities, and materiel in the execution of Defense Community Relations programs.

§ 237.2 Purpose and application.

This part establishes policy and delineates responsibility and authority concerning the use of Armed Forces personnel, facilities and materiel in the programing and execution of Defense community relations programs, including budgeting and financing therefor. It applies to all Department of Defense components and to the public affairs aspects of those programs or activities receiving financial assistance from any component of the Department of Defense.

§ 237.3 Terms.

The two terms basic to this part are defined in paragraphs (a) and (b) of this section. Other pertinent terms are defined in § 237.7.

(a) Community relations is the relationship between the military and civilian communities.

(b) Community relations program is that command function which evaluates public attitudes, identifies the mission of a military organization with the public interest, and executes a program of action to earn public understanding and acceptance. Community relations programs are conducted at all levels of command, both in the United States and overseas, by military organizations having a community relations area of responsibility. Community relations programs include, but are not limited to, such activities as liaison and cooperation with associations and organizations and their local affiliates at all levels; Armed Forces participation in international, national, regional, State, and local public events; installation open houses and tours, embarkations in naval vessels, orientation tours for distinguished civilians; people-to-people and humanitarian acts, cooperation with Government officials and community leaders, and encouragement of Armed Forces personnel and their dependents to participate in activities of local schools, churches, fraternal, social and civic organizations, sports and recreation programs, and other aspects of community life to the extent feasible and appropriate, regardless of where they are located.

§ 237.4 Policy.

(a) *General.* (1) The interest, understanding, and cooperation of the civilian community in Department of Defense activities are dependent upon a sound Armed Forces community relations program both at home and abroad. The objective of this program is to develop, improve, and maintain the full understanding by the American people and our overseas allies and their support of the mission of the Department of Defense to defend the United States and the Free World, to demonstrate U.S. partnership with our allies in collective security, and to develop an awareness that U.S. military personnel are dedicated, highly trained individuals.

(2) The morale of all personnel of the Department of Defense is affected by the favorable or unfavorable attitudes of the civilian community toward their mission and their presence in the area, both in the United States and overseas. In this connection, community relations programs should be guided by the Department of Defense policy of conducting all of its activities in a manner free from racial discrimination and fostering

equal treatment for Armed Forces personnel and their families.

(3) Active participation of military units and military personnel and their dependents as individuals in civilian activities, organizations, and programs is an important factor in establishing and maintaining a state of mutual acceptance, respect, cooperation, and appreciation between the Armed Forces and civilian communities affected by their operations.

(b) *Participation in community relations programs.* Community relations programs are authorized and encouraged for the following purposes subject to operational requirements for personnel, facilities and materiel resources; the significance of the event or program in relation to other Department of Defense programs, and cost considerations:

(1) Informing the public on the state of preparedness of the Department of Defense and to demonstrate U.S. partnership with allies in collective security and the mutuality of United States and host nations' interests.

(2) Developing public understanding of and cooperation with the Department of Defense in its community relations program.

(3) Promoting national security and stimulating patriotic spirit.

(4) Assisting recruiting and personnel procurement programs of the Armed Forces.

(c) *Guidelines.* (1) Department of Defense participation must not directly or indirectly benefit or appear to benefit or favor any private individual, commercial venture, sect, or political or fraternal group, or be associated with solicitation of votes in an election.

(i) Department of Defense participation which supports commercial advertising, publicity, promotional activities, or events so as to benefit or favor a commercial venture is not authorized. The provisions of DoD Instruction 5410.19, April 21, 1965, and DoD Directive 5500.7, "Standards of Conduct" (31 FR 4989 and 5353) Secretary of Defense Memorandum, "Participation of Department of Defense Personnel and Use of Military Facilities in Public Information Programs Sponsored by Non-Governmental Organizations or Groups," October 5, 1961 (hereby canceled), section 701, Title 18, United States Code, section 5a, Federal Trade Commission Act (38 Stat. 719), as amended (15 U.S.C. 45) also pertain.

(ii) Department of Defense participation shall be incidental to the event except for programs of a patriotic nature, celebration of national holidays, or events which are open to the general public at no charge for admission. A general admission charge need not of itself deny Department of Defense participation. However, no specific or additional charge may be made to observe the authorized Department of Defense participation. The provisions of this paragraph do not apply to those special bands (U.S. Navy Band, U.S. Marine Band, and U.S. Air Force Band) engaged in authorized concert tours conducted at no additional cost to the Government.

(iii) Participation in or support of commercially sponsored programs on audiovisual media as authorized by Deputy Secretary of Defense Memorandum, "Availability of Facilities to Military Personnel," June 19, 1961, is also exempted from the provisions of this subparagraph.

(iv) Armed Forces support to nationally recognized Veterans' organizations is authorized when the participation is in support of programs oriented to the veteran rather than the sectarian or national origin objectives of the organization. Similarly, Armed Forces support to nonpublic schools is authorized when the participation is clearly in support of educational or personnel procurement programs.

(2) Department of Defense participation in any public event within the purview of this Directive is authorized only if admission, seating, and all other accommodations and facilities connected with the event or activity are available to all without regard to race, creed, color, or national origin. The provisions of DoD Directive 5120.36, July 26, 1963, DoD Directive 5500.11, published at (29 FR 19291), Deputy Secretary of Defense memorandum, "Federal Participation in Segregated Meetings," July 7, 1964, and Secretary of Defense memorandum on

Civil Rights Act of 1964, July 10, 1964, also pertain.

(3) Department of Defense participation in support of fund-raising efforts will normally be limited to the federated and joint campaigns authorized by DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," and its attachment, the Manual on Fund-Raising Within the Federal Service, such appeals as the President or the Chairman of the Civil Service Commission may authorize, and the military aid societies. In view of the national interest, the Armed Forces may also support sports or other public events held for the sole purpose of raising funds for U.S. teams competing in the Pan American Games and Olympic Games. Armed Forces support to fund-raising events or projects for a single cause, even though the prospective recipient is a member of one of the federated, joint, or authorized campaigns, or the proceeds are to be donated in part to one or several of the recognized campaigns, is inconsistent with the basic position.

(i) Department of Defense personnel are encouraged to participate actively in the work of federated, joint, or other authorized campaigns as members of policy boards or committees, heads of local campaign units or volunteer workers to the extent consistent with Department of Defense policy and prudent use of official time. They are encouraged, also, to devote as much of their private time as possible to such volunteer work in the public interest.

(ii) This is not intended to prohibit nor to discourage Department of Defense personnel from otherwise participating as private citizens in voluntary agency activities during their off-duty hours in fund-raising activities which are not recognized for on-the-job solicitation within the Federal Service. However, Department of Defense personnel may not participate in their official capacity either during duty or nonduty hours, nor may such participation be conducted as an officially command-sponsored project.

(iii) Exceptions to this policy are made for those special concert bands engaged in authorized concert tours being conducted at no additional cost to the government; and for overseas Unified and Specified Commands (except within the States of Alaska and Hawaii) whose commanders desire to authorize and permit participation in athletic or sports competition within their commands in support of local or indigenous fund-raising efforts.

(4) In communities where two or more Military Departments are stationed, commanders shall coordinate their response to requests for Armed Forces participation when it is apparent that more than one of the Departments may be involved. Coordinated planning and execution of such participation will be as directed by the military commanders concerned. Commanders will insure that participation is appropriate in scope and type and limited to those occasions which are in keeping with the dignity of the Military Departments and in good taste. The national, regional, State, or local significance of the event and the agency sponsoring the event will be used as guides in determining the scope and type of Department of Defense participation to be authorized.

(d) *Command support.* Appropriate recognition should be given by the Secretaries of the Military Departments, Commanders of Unified and Specified Commands, Directors of Defense Agencies, and commanders at all levels, to the outstanding accomplishments of commands or individuals in improving community relations. The exchange of information among Department of Defense components and their field agencies concerning effective programs is encouraged.

(e) *Programing, budgeting and financing.* (1) The Secretaries of the Military Departments and the Directors of Defense Agencies will make provisions in their programing, budget estimates and financing programs for conducting effective community relations programs consistent with the provisions of this part, including the budgeting and financing requirements of the programs developed by Commanders of Unified and Specified Commands. The cost of participating in or furnishing resources for a community relations event will be the responsibility of the Military Department or Defense agency involved and must be accomplished within financing available to the Military Department or Defense agency. The financial requirements for these purposes will be kept to the minimum necessary to accomplish Department of Defense objectives.

(2) Costs of participation will normally be at Government expense for the following types of events and programs when they are in the primary interest of the Department of Defense.

(i) Department of Defense or civic-sponsored public observances of U.S. (or host country) national holidays.

(ii) Official civil ceremonies and functions.

(iii) Speaking engagements.

(iv) Programed, scheduled tours by military information activity support units (U.S. Army Exhibit Unit, U.S. Navy Exhibit Unit, and U.S. Air Force Orientation Group) when this method of reaching special audiences is considered by the Secretaries of the Military Departments concerned to be the most effective and economical way of accomplishing a priority public information or community relations program. The Assistant Secretary of Defense (Public Affairs) will monitor this program.

(v) Tours by units, such as the U.S. Army Field Band, when appropriated funds are specifically provided for such participation.

(vi) Events considered to be in the national interest, or in the professional, scientific, or technical interests of a Military Department, Defense Agency, or Unified or Specified Command, when approved by the Secretary of Defense or the Commander of an overseas Unified or Specified Command, as appropriate.

(vii) Support of personnel procurement activity. Such participation is properly chargeable to personnel procurement programs and is governed by paragraph (c)(1)(i) of this section. Personnel procurement activity is otherwise exempt from the provisions of this part.

(3) Department of Defense participation in all other public events of mutual benefit to the Department of Defense and the sponsor of the event will normally be at no additional cost to the Government. The event will be financed as follows:

(i) Additional cost to the Government as defined in § 237.7(j), will be reimbursed by the sponsor.

(ii) Other services, when required by the nature of the event, will be provided by the sponsor as follows: ground transportation between an airport and the event, unless within a local installation's community relations area as defined in § 237.7(l); rental space, utilities and custodial services, public liability, and property damage insurance for aerial demonstrations; and such other services determined necessary by the Department of Defense component participating in the event and agreed to be provided by the sponsor.

(iii) Continuing-type costs to the Government, which would have existed had the Department of Defense not participated in the event, will not be reimbursed by the sponsor. These costs as defined in § 237.7(k), represent the Department of Defense share of the costs of events of mutual benefit.

§ 237.5 Responsibilities and authorities.

(a) *General.* Secretaries of the Military Departments, Commanders of Unified and Specified Commands, and the Directors of the Defense Agencies, are responsible to the Secretary of Defense for community relations. Commanders at all levels will give positive emphasis to the importance of good community relations in the execution of their missions.

(b) The Assistant Secretary of Defense (Public Affairs) is designated to act for and in behalf of the Secretary of Defense in implementing the provisions of this part, and in granting any exceptions thereto.

(1) Requests for Department of Defense participation in community relations programs of the following nature shall be forwarded through the Office of the Assistant Secretary of Defense (Public Affairs) for determination.

(i) International and national events, except those taking place in overseas areas which are primarily of internal concern to Unified or Specified Commanders as outlined in paragraph (c) of this section.

(ii) Community relations programs and public events in areas outside the United States which have an interest and impact extending beyond the Unified and Specified Command area, or which require assistance from outside the command area.

(iii) Public events in the Washington, D.C., area.

(iv) Aerial demonstrations, parachute team demonstrations, or simulated tactical demonstrations held off military installations except those held in areas assigned to overseas Unified and Specified Commands.

(v) Post-season bowl games, sports contests held off base with professional opposition, or formal international competitions, except as noted in paragraph (c)(3) of this section.

(vi) Armed Forces Day activities as covered in DoD Directive 5400.5, "Armed Forces Day".

(2) In addition, the Assistant Secretary of Defense (Public Affairs) is responsible for developing and issuing, in coordination with the Assistant Secretary of Defense (Manpower) and the Assistant Secretary of Defense (Comptroller) on matters affecting their assigned responsibilities, supplementary policies and procedures necessary to carry out the provisions of this part.

(c) Overseas Unified and Specified Commanders are delegated authority to:

(1) Plan and execute community relations programs in accordance with the provisions of this part in the States of Alaska and Hawaii and in overseas areas for which they have command responsibility. This authority may be delegated. Participation in events held in the States of Alaska and Hawaii will be governed by the same principles and policies applicable to other States.

(2) Except for events held within the States of Alaska and Hawaii, overseas Unified and Specified Commanders are designated to act for and in behalf of the Secretary of Defense in implementing the provisions of this part within their commands and in granting any exceptions thereto. This authority may be delegated.

(3) Policy direction and guidance for overseas community relations programs, consistent with the overall policy guidance of this part will be provided by the overseas Unified and Specified Commanders rather than by the Military Departments or Defense Agencies.

(4) Commanders of Unified and Specified Commands, in coordination with their component commanders, will conduct effective community relations programs, consistent with the provisions of this part, and will provide through established channels, for the inclusion of such program requirements in the programing, budget estimates and financing programs of the appropriate Military Departments, as provided for in § 237.4(e).

(d) Secretaries of Military Departments and Directors of Defense Agencies (within their respective areas of responsibility) shall plan and execute community relations programs and approve Armed Forces participation in public events not otherwise reserved or assigned in paragraphs (b) and (c) of this section. This authority may be delegated.

(e) *Coordination.* Community relations programs and public events taking place within the 50 United States which have an effect on a Unified or Specified Command as a whole or are otherwise of significant concern to a Unified or Specified Command, require complete coordination between the Command and the Military Department(s) concerned. This same rationale is applicable to coordination with the Military Departments by the Unified and Specified Commands through the appropriate component command for community relations programs and participation in public events requiring the support of the Military Departments.

§ 237.6 Records and reports.

The Assistant Secretary of Defense (Public Affairs) will be kept informed regarding all significant community relations programs. To insure proper national level planning and coordination of programs which involve other activities of the U.S. Government and foreign governments; to answer inquiries from the Congress, the press, and the general public; to provide a basis for recognition of outstanding command or individual accomplishments; and to evaluate program effectiveness, records will be kept, and a report will be submitted as follows:

(a) A semiannual report, to cover significant community relations programs accomplished during the period, and planned for the following 6 months, will be submitted to the Assistant Secretary of Defense (Public Affairs) as prescribed in § 237.8 (Semiannual Community Relations Report). This report, covering the periods January 1 through June 30, and July 1 through December 31, will be submitted directly to the Assistant Secretary of Defense (Public Affairs) by the Secretaries of the Military Departments and Commanders of the Unified and Specified Commands, not later than March 1 and August 31 respectively.

(b) Commanders of Unified Commands will include in their semiannual reports as prescribed in § 237.8 only those significant programs which are multi-Service, command-wide, or multinational in scope and interest; which required, or will require support from outside the normal resources of their command; or which require specific coordination and guidance from the Unified Commander or from the Assistant Secretary of Defense (Public Affairs). Reports by the Secretaries of the Military Departments as prescribed in § 237.8 will not include the types of programs which are reported by Unified Commanders, but will be limited to significant programs of single-Service interest and significant local command activities.

(c) Information included in reports on Armed Forces Day, as required by DoD Directive 5400.5, "Armed Forces Day," will not be included in semiannual community relations reports.

(d) In addition to the semiannual reports on significant community relations programs as directed above, records of specific public events in support of community relations programs will be maintained by commanders at appropriate levels as determined by the Secretaries of the Military Departments, the Commanders of the Unified and Specified Commands and the Directors of the separate agencies of the Department of Defense. Records will be in sufficient detail to provide information to the Secretary of Defense if required. They will include, as a minimum, date and place of event; sponsor, names and titles of sponsor officials; names and titles of principal military officials participating; speakers, troop units, bands, exhibits, demonstrations, and administrative support provided; estimated size of civilian audience; and the total additional cost to the Government.

§ 237.7 Glossary of terms.

The following terms, which apply for purposes of this part, are furnished as an aid in determining the suitability, appropriate degree, type of financing of Department of Defense participation in public events, official civil ceremonies, community relations programs, and similar events.

(a) *International, national, regional, State, and local events.* (1) An international event is one which the audience and/or participation is drawn from the United States and at least one other nation.

(2) A national event is one in which the audience and/or participation is drawn from the United States as a whole.

(3) A regional event is one in which the audience and/or participation is drawn from two or more States of the United States.

(4) A State event is one in which the audience and/or participation is drawn from that State as a whole.

(5) A local event is one within a State which centers on and is of primary interest to a single community.

Corresponding classifications may be made in overseas areas by the Unified and Specified Commanders.

(b) *Department of Defense participation.* Includes any use of Armed Forces personnel as individuals or as units; facilities, and materiel to include aircraft, ships, exhibits, and equipment in support of community relations programs.

(c) *Aerial demonstrations.* Flight demonstrations, jumps, personnel, or equipment drops by Armed Forces personnel or aircraft for public affairs purposes.

(d) *Personnel, facilities and materiel utilization.* The use or appearance of individuals or groups or units of military personnel, performing units and marching units, drill teams, drum and bugle (or drum and fife) corps; single-service or joint-service color details, honor and security cordons, military bands and choral groups or their components; use of Armed Forces facilities, to include aircraft, ships and installations; and the use of Armed Forces materiel and equipment to include exhibits and loanable or donable items for community relations purposes.

(e) *Armed Forces exhibits.* Any display for public affairs purposes of Armed Forces materiel. Specifically included are items of equipment, models, devices, and information and orientation materiel placed for public information purposes before audiences at conventions, conferences, seminars, demonstrations, exhibits, fairs, or similar events. Also included are general purpose displays in public buildings or public locations. Excluded are operable aircraft.

(f) *Public events.* Programs held in the civil domain to include all ceremonies, demonstrations, exhibitions, expositions, athletic contests, fairs, trade or air shows, conventions, meetings, symposia or similar programs not connected with the military functioning of the Department of Defense and intended primarily for nonmilitary audiences. Exercises, movements or maneuvers conducted as a part of military training, even though incidentally observed by the general public, are not considered public events.

(g) *Fraternal groups.* Societies whose members are banded together for mutual benefit or for work toward a common goal. They include, but are not limited to, such organizations as the Fraternal Order of the Eagles, Benevolent and Protective Order of Elks, Loyal Order of the Moose, Free and Accepted Masons (Scottish Rite, York Rite, and Shrine), Knights of Columbus, Knights Templar, Independent Order of Odd Fellows, and Order of the Eastern Star. Service or luncheon clubs, such as Rotary International, Kiwanis International, Lions International, Optimists, Toastmasters International, or Junior Chambers of Commerce, are not considered fraternal groups.

(h) *Official civil ceremonies.* Those public events sponsored and conducted by Federal, State, county and municipal governments, to include, in overseas areas, corresponding authorities of the host nation. Official civil ceremonies include inaugurals, dedications of public buildings and projects, ceremonies for officially invited governmental visitors, and the convening of legislative bodies. Community or civic celebrations such as banquets, dinners, receptions, carnivals, festivals, opening of sports seasons, and anniversaries are not considered official civil ceremonies even though sponsored or attended by civic or governmental dignitaries.

(i) *Holidays.* (1) National holidays are those prescribed by Federal Law, i.e., New Years Day (January 1); Washington's Birthday (February 22); Memorial Day (May 30); Independence Day (July 4); Labor Day (1st Monday in September); Veterans Day (November 11); Thanksgiving Day (4th Thursday in November); Christmas Day (December 25).

(2) Armed Forces Day (3d Saturday in May) will be treated as a national holiday for purposes of this part.

(3) State holidays are those officially proclaimed by an individual State as holidays to be observed in that State.

(4) Primary, general, and special election days are not considered holidays.

(5) A corresponding classification of "host nation" holidays may be made in oversea area by Unified and Specified Commanders.

(j) *Additional cost to the Government.* That cost financed from the operation and maintenance type appropriation available to the Department of Defense component furnishing the Government resources for a public event of mutual benefit to the Department of Defense and the sponsor of the event. Additional costs normally include but are not necessarily limited to the following items: Travel and transportation of military personnel, meals, or lodging or per diem allowances payable under the provisions of the Joint Travel Regulations, and the transporting, handling, and cost of aviation fuel if such fuel is not available at military contract price at the staging base.

(k) *DoD share of costs.* The Department of Defense share of costs for events of mutual benefit will normally include those continuing-type costs to the Government which would exist if the Department of Defense component did not participate in the event, such as: Regular pay and allowances of the Armed Forces, small incidental expenses of an installation (e.g. local transportation, telephone calls, etc.), and other minor expenses as may be determined by the Department of Defense component participating in the event. The use of routine training flights or military aircraft for the transport of military personnel, if requested by a Department of Defense component, approved, and determined to be available, is also considered to be a Department of Defense share of costs for an event of mutual benefit. See DoD Directive 5122.8, December 13, 1963, and DoD Instruction 5435.2, December 13, 1963.

(l) *Community relations area.* That geographical area wherein Department of Defense facilities and/or personnel have a social or economic impact on the populace.

(m) *Washington, D.C., area.* The District of Columbia, the City of Alexandria, Va., the Counties of Arlington and Fairfax, Va., and the Counties of Montgomery and Prince Georges in Maryland, together with incorporated municipalities lying within these borders.

§ 237.8 Semiannual DoD community relations report.

Semiannual Department of Defense community relations reports will be submitted in format and substance as follows:

(a) *Programs.* List in brief narrative form the major community relations programs conducted during the reporting period, with special attention to:

(1) *Exceptional accomplishment and results.* List major community relations programs that have been particularly successful, giving reasons for success. Enclose pictures, press clippings, if available.

(2) *Problem areas.* Include problems such as a shortage of personnel, facilities and equipment; base closures or reductions; law enforcement; public housing; racial issues, military noise problems; and public criticism of specific programs, actions or policies.

(3) *Solutions.* Programs to solve problems listed above, including successes and failures. Enclose pictures, press clippings or other materials as appropriate to illustrate problems or to demonstrate success.

(4) *Recommendations for improvements.* Include specific recommendations concerning any steps which the Assistant Secretary of Defense (Public Affairs) might take to help solve specific community relations problems.

(5) *Forecast.* Include brief outline of significant community relations programs to be conducted in next 6 months which have potential national, international or wide regional interest, or which are likely to have major impact, either favorable or unfavorable, on public opinion. All activities which involve more than one Service or more than one major command should be included.

PART 237a—PUBLIC AFFAIRS LIAISON WITH INDUSTRY

Sec.

237a.1 Purpose.
237a.2 Applicability.
237a.3 Objective and policy.
237a.4 Procedures.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 35 FR 10889, July 7, 1970, unless otherwise noted.

§ 237a.1 Purpose.

This part establishes (a) guidance for preparation of the Defense Industry Bulletin, and (b) includes guidance and procedures governing Department of Defense cooperation with industry on (1) public affairs matters in general, (2) industry-sponsored events, and (3) advertising defense themes and products.

§ 237a.2 Applicability.

The provisions of this part apply to all components of the DoD.

§ 237a.3 Objective and policy.

(a) It is important that American industry—particularly defense contractors—understand the plans, programs, and activities of the DoD. Such understanding can be achieved by (1) wide dissemination of information to the business community, consistent with national security, and (2) cooperation with industry in public relations activities which are not contrary to the national or DoD interests.

(b) As outlined in Part 237 of this subchapter, DoD components shall cooperate with industry at local and regional levels. However, they will notify the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) promptly of any local or regional activity which has the potential of being escalated, or which has been escalated by unforeseen circumstances, to national or international interest.

§ 237a.4 Procedures.

(a) *Defense Industry Bulletin.* The bulletin, authorized by Part 237 of this subchapter to apprise defense contractors, trade associations and other business organizations of DoD policies, plans, programs, and procedures which have an impact on business or industry, achieve widespread awareness and understanding of DoD policies, plans, programs, and procedures governing research, development and production, and the procurement of goods and services, and serve as a guide to and stimulate ideas throughout the industrial community concerning solutions of problems arising in fulfillment of DoD requirements, will be published and distributed by the Directorate for Community Relations, OASD(PA).

(1) DoD components may submit any of the items listed below to the Editor, Defense Industry Bulletin, OASD(PA), by the 20th day of each month. If no significant information exists, a negative report will be submitted.

(i) Articles, preferably by-lined, with supporting photographs or illustrations. (Suggested length is 2,000-2,500 words, but may be shorter or longer as coverage of subject requires.)

(ii) Material covering subjects that are timely and of particular interest to those organizations oriented toward defense contracting, including, but not necessarily limited to:

(*a*) Research and development; (*b*) procurement; (*c*) contract management; (*d*) small business opportunity; (*e*) DoD policies affecting industry; (*f*) management improvement programs, such as Zero Defects; (*g*) programs successfully conducted by industry and the DoD working together; (*h*) explanations of new DoD issuances affecting industry; and (*i*) major organizational changes.

(iii) Key personnel appointment and reassignment announcements, for the "About People" section.

(iv) New or revised official directives, instructions, regulations, and other publications, for the "Bibliography" section.

(v) Scheduled technical meetings and symposia sponsored by DoD organizations, projected at least forty-five (45) days, for the "Meeting and Symposia" section.

(vi) Announcements of meetings, conferences, briefings, demonstrations, exercises, etc., projected at least forty-five (45) days, for the "Calendar of Events."

(2) Each DoD component will designate one action officer and one alternate to assist the Directorate for Community Relations, OASD(PA), in carrying out responsibilities defined in paragraph (a)(1) of this section.

(b) *Participation in special events*—(1) *Industry-sponsored events.* (i) DoD components are encouraged to cooperate with and assist industry in activities and events beneficial to the Government, provided such cooperation and assistance is not in conflict with the provisions of Part 40 of this chapter which authorizes participation in:

(*a*) Luncheons, dinners and similar gatherings when the host is an industrial, technical, or professional association, not an individual defense contractor or other commercial firm;

(*b*) Public ceremonies of mutual interest to industry, local committees, and the DoD (examples—ship launchings, rollouts, and first flights);

(c) Industrial programs which are in support of Government policy (example—international exhibits which offer the opportunity to promote U.S. scientific and technical leadership); and

(d) Civic and community projects in which industry relationship is remote from the purpose and tenor of the event (example—Armed Forces Day event sponsored by an individual firm).

(ii) Participation in events which benefit a particular firm (examples—open houses and ceremonies dedicating new facilities) will be limited, normally, to speaker participation (see Part 238 of this subchapter).

(2) *DoD-sponsored events.* Generally, DoD public affairs programs will be performed within authorized resources. Contractor participation in DoD-sponsored events involving a firm's product or service may be authorized, provided such participation is in the Government's interest.

(3) *Jointly sponsored events.* Joint DoD-industry sponsorship may be desirable in certain instances (examples—seminars, conferences, and symposia). Industry assistance is normally provided by a trade, technical, or professional association. Requirements for clearance of DoD official information prepared for disclosure (see Part 159 of this chapter and DoD Directive 5230.9, "Clearance of Department of Defense Public Information") will be adhered to when applicable.

(4) *General.* Participation in industrial events of national and international interest must be approved by the ASD(PA) in advance. Detailed proposals, including cost estimates, will be submitted to the ASD(PA) through the headquarters of the DoD component concerned. Requests for approval involving industry participation in either DoD or DoD-industry sponsored events will specify the nature and extent of industry-furnished assistance, if any.

(c) *Use of DoD insignia, themes, and products in advertising*—(1) *Insignia.* Use of insignia is governed by Part 237 of this subchapter.

(2) *Themes and products.* Requests for use of DoD themes and products in commercial advertising and other promotions will be evaluated in terms of their benefit to the DoD. A determination as to whether cooperation should be extended will be made by the ASD (PA) (except in the case of DoD component-controlled insignia), in accordance with the provisions of Part 237 of this subchapter. The DoD will bear only those advertising costs authorized by section XV of the Armed Services procurement regulation in Part 15 of this chapter.

(3) *Filmed material.* Participation in the production of motion pictures and TV programs, including filmed commercials, will be governed by provisions of DoD Instruction 5410.15, "Delineation of DoD Audio-Visual Public Affairs Responsibilities and Policies," and DoD Instruction 5410.16, "Procedures for DoD Assistance on Production of Non-Government Motion Pictures and Television Programs."

(d) *Use of contractor product identification.* DoD components may identify contractors in their information activities whenever the major responsibility for a product (example—an aircraft) can be clearly and fairly credited to an identifiable contractor. In these instances, DoD information releases will include both the manufacturer's name and the DoD component's designation of the product.

(e) *Solicitation.* (1) DoD representatives will not solicit, or authorize others to solicit, from contractors for advertising, contributions, donations, subscriptions, or other emoluments. Where there is a legitimate need for industry promotion items, such as scale models—for example in recruiting programs—the headquarters of the DoD Component concerned may authorize procurement of such items as required.

(2) Defense contractors wanting to distribute items through official DoD channels should be advised to contact the headquarters of the DoD component concerned for guidance.

(f) *Briefings.* (1) Advanced planning briefings for industry are governed by DoD Instruction 5230.14, "Advanced Planning Briefings for Industry."

Filed as part of the original. Copies available from U.S. Naval Publications and

Continued

(2) Classified meetings are governed by DoD Directive 5200.12,[2] "Security Measures, Approval and Sponsorship for Scientific and Technical Meetings Involving Disclosure of Classified Information."

(g) *Visits to contractor facilities.* (1) Visits to contractor facilities will be governed by the provisions of DoD Manual 5220.22-M,[3] "Industrial Security Manual for Safeguarding Classified Information (Attachment to DD Form 441)."

(2) When DoD Components desire to sponsor such visits by nationally known press representatives, approval will be obtained from both the contractor and the ASD(PA).

PART 238—ARMED FORCES COMMUNITY RELATIONS

Sec.

238.1 Reissuance and purpose.
238.2 Applicability and scope.
238.3 Definitions.
238.4 Policy.
238.5 Procedures.
238.6 Guidelines.
238.7 Funding.
238.8 Responsibilities and authorities.
238.9 Information requirements.
238.10 Armed Forces aerial demonstrations.
238.11 Armed Forces bands, troops, and units in support of public programs.
238.12 Speaking engagements.
238.13 National organizations.
238.14 Armed Forces Day.
238.15 Veterans Day observances and National conventions of National Veterans organizations.
238.16 Presidential wreath-laying ceremonies.
238.17 Sports activities.
238.18 DoD coordinators.
238.19 Miscellaneous public affairs-related activities.
ENCLOSURE 1—FORMAT REQUEST FOR AERIAL DEMONSTRATION
ENCLOSURE 2—REQUEST FORMAT FOR ARMED FORCES PARTICIPATION IN PUBLIC EVENTS
ENCLOSURE 3—FACT SHEET (SPEAKING ENGAGEMENTS BY DOD PERSONNEL)
ENCLOSURE 4—SPEAKER REQUEST FORMAT
ENCLOSURE 5—PRESIDENT'S APPROVED WREATH LIST

AUTHORITY: 5 U.S.C. 22.

SOURCE: 45 FR 21229, Apr. 1, 1980, unless otherwise noted.

§ 238.1 Reissuance and purpose.

This part is reissued to supplement Part 237 of this title and to provide procedural guidance for the planning and conduct of community relations activities of the Armed Forces.

§ 238.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments (including their National Guard and Reserve Components), the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). (As used in this Instruction, the term "Military Services" refers to the Army, Navy, Air Force, and Marine Corps.)

(b) Its provisions encompass all DoD community relations programs regardless of name, program, or sponsorship.

§ 238.3 Definitions.

(a) As used herein the following definitions apply:

(1) *Military installation.* Any installation owned or operated by the Department of Defense or by a DoD Component such as a base, station, post, reservation, camp, depot, fort, terminal, facility, ship, school, and college.

(2) *Elsewhere.* Any location, other than a military installation, at or on which a community relations program may be conducted.

(3) *Official Federal Government functions.* Those activities in which officials of the Federal Government are involved in the performance of their official duties.

(4) *Official DoD functions.* These activities (including Defense Committees, Joint Civilian Orientation Conference (JCOC), and activities held on military installations, or elsewhere when the appropriate commander certifies that suitable facilities are not available on a military installation)

Forms Center, 5801 Tabor Ave., Philadelphia, Pa. 19120, Attn: Code 300.

[2] See footnote 1 on previous page.

[3] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402—$3.05.

which are sponsored by a Military Service, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel, dependents, and guests.

(5) *Official civic functions.* Those activities in which officials of State, county, or municipal governments are involved in the performance of their official duties (for example, inaugurals, dedications of public buildings and projects, the convening of legislative bodies, and ceremonies for officially invited Government visitors).

(b) Other terms used in this part are defined in § 237.8 of this title, and §§ 238.10 and 238.12 of this part.

§ 238.4 Policy.

(a) The policy of the Secretary of Defense governing Armed Forces Community Relations programs is based on public law and executive orders and is set forth in Part 237 of this title. Amplification of basic policy and supplemental guidelines for the planning and conduct of specific categories and types of community relations programs are contained in this part.

(b) The Assistant Secretary of Defense (Public Affairs) (ASD(PA)) been designated as the principal staff assistant to act for and in behalf of the Secretary of Defense in granting any exceptions to basic public affairs policy.

(1) Requests for exceptions to this policy shall be submitted to the ASD(PA) via command channels.

(2) Such requests shall contain, as a minimum: (i) A description of the community relations program contemplated, (ii) a justification for approval of the exception, and (iii) appropriate recommendations.

(3) Exceptions shall be granted on a case by-case basis.

(c) Policy guidance concerning public affairs relations with business and non-Government organizations representing business is contained in Part 237a of this title.

(d) Policy governing the use of military carriers for public affairs purposes is contained in DoD Instruction 5435.2,[1] "Delegation of Authority to Approve Travel In and Use of Military Carriers for Public Affairs Purposes," April 25, 1975.

§ 238.5 Procedures.

(a) Within basic legal and policy limitations, commanders at all levels who plan or conduct a community relations program shall consider initially:

(1) The interests of the Department of Defense and the community as a whole.

(2) Pertinent operational requirements.

(3) The availability of adequate and appropriate resources.

(b) When a proposed community relations program exceeds local support capability or the scope of local public affairs responsibility, it shall be referred, via command channels, to the appropriate higher echelon. The proposal shall contain, as a minimum:

(1) A description of the program;

(2) A list of support requirements;

(3) A description of the anticipated scope of the program;

(4) Comments concerning expected community reactions; and

(5) Appropriate recommendations.

(c) All DoD Components shall use approved DoD request formats, appended as various enclosures to this Part, in processing requests by civilian sponsors for Armed Forces support of community relations programs. These formats, which may be reproduced locally, provide sufficient information to permit the approving authority to: (1) Evaluate the appropriate degree of Armed Forces support, and (2) determine compliance with the requirements of this part.

(d) To ensure that a proposed community relations program conforms to the limitations imposed by public law and by policy contained in Part 237 of this title, the following aspects of the program shall be evaluated (using the criteria set forth in § 238.6.)

(1) The objectives and purposes of the program (*"program criteria"*).

(2) The interests and objectives of the sponsor or sponsoring group (*"sponsor criteria"*).

---

[1] Copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, Pa., 19120, Attn: Code 301.

(3) The nature or character of the location of the program (*"site criteria"*).

(4) The full particulars of DoD support (*"support criteria"*).

§ 238.6 Guidelines.

(a) The Department of Defense authorizes and encourages support of community relations programs when at least one of the conditions listed in each of the following criteria categories (program, sponsor, site, and support) is met:

(1) *Program criteria.* When the program is:

(i) Specifically authorized or directed by public law, executive order, or the Secretary of Defense.

(ii) An official Federal Government, military, or civil ceremony or function.

(iii) An event or occasion of general interest or benefit to a local, State, regional, or national community, and is available to the community.

(iv) In support of authorized recruiting or personnel procurement programs.

(v) In support of: (A) United, federated or joint fund-raising campaigns authorized by DoD Directive 5035.1,[1] "Fund-Raising Within the Department of Defense, April 7, 1978; (B) such fund-raising appeals as the President or the Director of the Office of Personnel Management may authorize; or (C) the Military Service Aid societies.

NOTE: DoD support for local fund-raising programs, other than those described above, is authorized only when the fund-raising program is local in nature, is of community-wide interest and benefit, and has the support of endorsement of the local united, federated, or joint campaign officials; or when, in the judgment of the local commander, support of a purely local charitable drive is part of the responsible role of the military installation in the local community. Volunteer fire department, rescue unit, or youth activity fund drives are examples of such local programs.

(vi) In support of fund-raising campaigns solely for the benefit of U.S. teams competing in the Pan American Games or the Olympic Games (see DoD Directive 1330.4,[1] "Participation in Interservice National and International Sports Activities," November 14, 1968).

(vii) Of a patriotic nature, or with the addition of military support, designed to include a patriotic acknowledgement; or the celebration of a Government-recognized local, State, regional, or national holiday.

(2) *Sponsor criteria.* The sponsor or sponsoring organization does not specifically exclude any person from its membership for reasons of race, creed, color, or national origin. DoD support is authorized for programs sponsored by organizations whose qualification for membership is based on sex or national origin only when the primary benefit and interest are to the community rather than to the organization. DoD support is authorized when the sponsor is:

(i) A local, State, or Federal Government.

(ii) A veteran's, Military Service-related, patriotic, or historical organization or auxiliary.

(iii) An organization (civic, service, youth, professional, educational, business, trade, or labor) whose interests are in support of the community.

(iv) A commercial enterprise *only* when:

(A) DoD support is patriotic in nature, is incidental to the program, and does not benefit selectively nor appear to benefit selectively the commercial activity of the sponsor; (B) the sponsor's role is clearly civic in nature; and (C) the commercial interest is subordinate to the community interest, and benefit in the program.

(v) A public school, public college, or public university.

NOTE: Support is authorized for programs sponsored by nonpublic schools, colleges, or universities only when the program is (A) of a community-wide nature of common interest and benefit, is open to all, and is broadly publicized; or (B) when the program is clearly patriotic or educational in nature or is in support or recruiting programs.

(3) *Site criteria.* Admission, seating, and all other accommodations and site facilities connected with any public programs are available to all without regard to race, creed, color, national

---

[1] See footnote 1 to § 238.4(d).

origin, or sex, and the location of the program is:

(i) A military installation.

(ii) A local, State, or Federal Government property, facility or building.

(iii) A bona fide community center.

(iv) A private or commercial building *only* when DoD support is patriotic in nature, is incidental to the program, and does not benefit selectively nor appear to benefit selectively the owner of the building or the agent.

(v) A religious building or facility *only* when the program is of a community-wide, nonsectarian nature of common interest and benefit and is broadly publicized.

(vi) A shopping mall or center *only* when the program is a recruiting program, and:

(A) The support is directly related to the recruiting activities taking place, and the type and amount of support are commensurate with the scope and nature of the recruiting activity.

(B) Community relations support is not advertised, promoted, or presented as an attraction for the center or mall (or for special business activities such as promotional sales).

(C) The support activities are in no way related, nor do they appear to be related, to a particular business or particular group of business establishments within the mall or center.

NOTE: Because of the commercial nature of shopping malls and centers, special care must be exercised to avoid the selective benefit of specific business interests. Where two or more such centers or malls are part of a community, support of recruiting activities must be administered in an even-handed manner, with fairness and extreme care.

(4) *Support criteria.* The Department of Defense authorizes support which: (i) Can be reasonably expected to bring credit to the individuals involved and to the Armed Forces and is at no additional cost to the Government; or (ii) is specifically authorized to be at Government expense by this part (§ 238.7), by public law, by executive order, or by the Secretary of Defense.

(b) The Department of Defense does *not* authorize support of community relations programs when any one of the conditions listed in one of the following criteria categories exists.

(1) *Program criteria.* When the program is:

(i) Intended or appears to endorse, benefit selectively, or favor any private individual, group corporation, religion, sect, ideological movement, political organization candidate, or commercial venture.

(ii) For the purpose of solicitation of votes in a political election.

(iii) A commercially oriented program, such as a Christmas parade, a motion picture premiere, a fashion show, a beauty pageant, or any other event or activity conducted to stimulate sales or increase the flow of business traffic.

(iv) For the purpose of raising funds for causes other than those specified in § 238.6(a)(1)(v).

(v) One in which public confrontation is planned or likely or where the real or apparent purpose is to stage controversy.

(2) *Sponsor criteria.* The sponsor or sponsoring organizations specifically excludes any person from its membership for reasons of race, creed, color, or national origin.

(i) A commercial enterprise (except as specified in § 238.6(a)(2)(iv)).

(ii) A religious group (except for a school, as specified in § 238.6 (a)(2)(v)), sect, or partisan political organization, or ideological movement.

(iii) An organization whose constitution, bylaws, membership qualifications, or ritual is privately held and not available to the general public (e.g., many fraternal organizations).

(3) *Site criteria.* When:

(i) Admission, seating, and any other accommodation or facility connected with a public program are barred to any person because of race, creed, color, national origin, or sex.

(ii) The location of the program is a private, commercial, or religious facility, a shopping mall or center, or a nonpublic school, college, or university (except as specified in § 238.6(a)(3)).

(4) *Support criteria.* When DoD support:

(i) Has been determined, by a finding of fact, to interfere with the customary or regular employment of non-DoD persons in their art, trade, or profession.

(ii) Is or could be considered to be the primary or major attraction for which admission is charged, except for:

(A) Athletic events of the Military Service academies;

(B) Performances by aerial demonstration teams;

(C) Concerts by the U.S. Army Band, the U.S. Army Field Band, the U.S. Navy Band, the U.S. Marine Band and the U.S. Air Force Band while on authorized tours.

(iii) Consists wholly or in part of resources, facilities, or services which are otherwise reasonably available from commercial sources.

(iv) Involves the use of military personnel (including members of Guard/Reserve components and ROTC in uniform) outside military reservations as ushers, guards, parking lot attendants, runners, messengers, baggage handlers, for crowd control, or in any other inappropriate capacity.

(v) Interferes with military needs or operational requirements.

§ 238.7 Funding.

(a) The cost of DoD support of community relations programs authorized in § 238.7(b) shall be the responsibility of the DoD Component(s) involved. Funding requirements for these purposes shall be kept to the minimum necessary to accomplish DoD objectives.

(b) DoD Components shall absorb the costs of supporting those community relations programs that are specifically authorized by public law, executive order, or the Secretary of Defense, and the following types of programs when they are in the primary interest of the Department of Defense:

(1) Official Federal Government functions.

(2) DoD or civic-sponsored observances of United States or host country national holidays.

(3) Official civil ceremonies and functions.

(4) Speaking engagements.

(5) Events considered to be in the national interest or in the professional, scientific, or technical interests of a DoD Component or element, when approved by the Assistant Secretary of Defense (Public Affairs) or the Commander of an overseas Unified or Specified Command, as appropriate.

(6) Direct support of recruiting and personnel procurement activity, when the cost of such support is charged to recruiting or personnel procurement programs funds.

(c) DoD support of community relations programs that are not authorized in § 238.7(b) shall be at no additional cost to the Government.

(d) To adhere to congressional funding limitations, due care must be exercised in the identification of costs of community relations programs. Programming, budgeting, and financing policies are set forth in Part 237 of this title. In general, for purposes of the limitations, the incremental cost of any resource incurred solely for community relations purposes must be identified as a public affairs cost; and costs incurred by a DoD Component in connection with its support of a community relations program, which would not be incurred but for their public affairs aspects, must be identified as public affairs costs. Effective management of a community relations program may require full costing (total direct and indirect costs) of the use of resources when their use benefits or is caused by the program. This information shall be provided to management officials and the OASD(PA) on an "as required" basis.

(e) When routine training flights are used as opportune airlift to transport military personnel, no reimbursement to the providing Component is required. When Military Airlift Command industrially funded transportation facilities are used, the industrial fund must be reimbursed, in accordance with DoD Directive 7410.4,[1] "Regulations Governing Industrial Fund Operations," September 25, 1972.

§ 238.8 Responsibilities and authorities.

(a) Requests for DoD support of community relations programs shall, except as otherwise specified in this Instruction, be evaluated and approved or disapproved at the lowest practicable echelon or command (see § 238.5(a)(2)).

---

[1] See footnote 1 to § 238.4(d).

(b) The *Assistant Secretary of Defense (Public Affairs)* is the sole authority for granting any exception to the policy contained in Part 237 of this title and in this part.

(1) The ASD(PA) is the sole authority for approving all DoD support of community relations programs in the National Capital area (see § 238.11 and § 238.13), except speaking engagements (see § 238.12), and for DoD support of the following programs outside that area:

(2) National and international programs, including national conventions and meetings (except those programs taking place in overseas areas which are solely of internal concern to a Unified or Specified Commander); see §§ 238.11, 13, 14, 15, 16, and 18.

(3) Programs outside the 50 United States which are not within a Unified or Specified Command's area of responsibility.

(4) Programs where the officially designated flight and parachute demonstration teams (Golden Knights, Blue Angels, Thunderbirds) perform, in accordance with § 238.10.

(5) Programs held on a military installation involving an aerial review of more than one Military Service, and programs involving any aerial review, flyover, or aircraft demonstration held elsewhere within the United States or as outlined in § 238.8(b)(2) (except for flyovers for civic-sponsored observances of and official ceremonies for Armed Forces Day, Memorial Day, Independence Day and Veterans Day, authorized by the Secretaries of the Military Departments), in accordance with § 238.10.

(6) Programs that require acting as the sole point of official contact within the Department of Defense for liaison between the Department of Defense and the headquarters and Washington offices of national organizations and other national non-Government groups, except for those organizations representing a specific interest of a single Military Service, e.g., Association of the U.S. Army, Air Force Association, Navy League, Marine Corps League, etc. (see § 238.8(d)).

(7) Programs that provide information to national organizations, including business and industry groups, and call for approving support of the activities of such organizations and groups, in accordance with § 238.13. (See Part 237a of this title.)

(c) The *Unified and Specified Commanders*, except as specified in § 238.8(b), have been and are designated to act for and in behalf of the Secretary of Defense in implementing the provisions of Part 237 of this title and this part in their overseas area of responsibility (excluding the States of Hawaii and Alaska).

(d) The *Secretaries of the Military Departments*, except as specified in § 238.8(b), are authorized to approve requests for DoD support of community relations programs, and to:

(1) Approve the unofficial use of the official insignia of their Departments, except where such use is prohibited by law.

(2) Conduct direct communication and liaison with organizations representing specific interests of their respective Military Departments. Military Departments which maintain liaison with such organizations are required to carry on their activities in accordance with the letter and the spirit of policies set forth in Parts 237, 91, and 40 of this title, (respectively). ASD(PA) shall be responsible for monitoring the liaison activities between Military Departments and these organizations.

(3) Delegate to local major unit commanders authority to support local programs jointly planned and conducted by border communities in California, Arizona, New Mexico, and Texas, with their counterparts in Mexico.

(i) Local programs are defined as those which center on and are of primary interest in a U.S. or Mexican border community.

(ii) Favorable determinations shall be based on the significance of the program, defense interest, advance consultation, and approval of appropriate U.S. consular officials, coordination with other Federal agencies, as required, and the concurrence of municipal authorities involved.

(e) The *Head of the Interservice Sports Committee* shall act for the

ASD(PA) in all matters pertaining to interservice competition and joint military Service participation in national and international sports. See § 238.17.

(f) The *Assistant Secretary of Defense (International Security Affairs)* (ASD(ISA)) shall coordinate DoD support of foreign disaster relief operations, in accordance with § 238.19.

(g) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall be responsible for certain miscellaneous public affairs related activities, as specified in § 238.19.

§ 238.9 Information requirements.

(a) Records will be maintained and required reports furnished in accordance with § 237.6 of this title.

(b) The additional reporting requirement specified in §238.11 has been assigned Report Control Symbol DDPA(M) 979.

§ 238.10 Armed Forces aerial demonstrations.

(a) *Purpose.* (1) This part relates to Armed Forces aerial demonstrations in support of community relations programs, including flight team demonstrations, parachute team demonstrations, flyovers, aerial reviews, static displays and other aerial activities.

(2) Attached to this enclosure is the approved DoD "Request for Aerial Demonstration" format.

(b) *Definitions.* As used herein, the following definitions apply:

(1) *Aerial event.* Any occasion such as an air show, festival, official Federal Government function, or official military and civic functions held on a military installation or elsewhere where an Armed Forces aerial demonstration is either a primary or incidental attraction.

(2) *Aerial demonstration.* The use or display of DoD military aircraft or personnel in any aerial event, including the following:

(i) *Flight team demonstration.* An exhibition of precision aerial maneuvers and techniques flown by an officially designated Service flight demonstration team, such as the U.S. Air Force Thunderbirds and the U.S. Navy Blue Angels.

(ii) *Parachute team demonstration.* A demonstration of free-fall and precision-landing techniques by the officially designated unit, the U.S. Army Golden Knights. Other military parachute teams, including individuals or groups, may be specifically authorized for such demonstrations when representing the Department of Defense.

(iii) *Flyover.* A straight and level flight by no more than four military aircraft from a Military Service over a predetermined point on the ground at a specific time and not involving aerobatics or demonstrations.

(iv) *Aerial review.* A flyover of multiple types of aircraft or aircraft representing more than one Military Service with elements in trail formation and not involving precision maneuvers or demonstrations.

(v) *Static display.* A ground display of aircraft and its related equipment not involving taxiing or starting of engines while spectators are in the display area.

(vi) *Aerial activities.* All other aerial demonstrations, not listed in paragraphs (b)(2) (i) through (vi) of this section, designed to portray performance techniques by a single aircraft or group of aircraft or personnel. Such demonstrations include but are not limited to air-to-air refueling, helicopter flight techniques, maximum performance takeoff, performance record demonstrations, mass parachute jumps, air delivery of equipment, assault aircraft demonstrations, tactical helicopter troop landings under simulated tactical conditions, air-rescue demonstrations, and rappelling demonstrations.

(c) *Policy.* (1) Armed Forces aerial demonstrations may be authorized at appropriate public programs, on a military installation, or elsewhere which meet basic criteria set forth in this Instruction. Support may include officially designated military flight or parachute demonstration teams, flyovers, aerial reviews, the static displays of aircraft, and other aerial activities.

(2) Any aerial demonstration will be entirely dependent upon the Military Services' capability to provide such resources at the time of an event.

(3) All pertinent safety regulations of the Department of Defense and the Department of Transportation (Federal Aviation Agency) will be rigidly observed, and will take precedence over any or all conditions or circumstances.

(4) Maximum advantage of Armed Forces recruiting will be taken at public events where Armed Forces aerial demonstrations have also been authorized.

(5) During the hours aircraft are actually on display or providing demonstrations before the public, qualified Armed Forces personnel will be available to explain the missions performed and answer spectators' questions.

(6) Armed Forces teams may not compete for prize monies. (See Part 237 of this title.)

(7) Armed Forces aerial demonstrations are usually limited to 2 days in any one aerial event. However, parachute demonstrations may extend over a 3-day period. This provision may be waived when:

(i) Other requests for the time frame have not been authorized.

(ii) Extended participation does not compromise another event because of travel time.

(iii) It is determined that the audience will change each day.

(iv) The event is of national or international nature and participation would be in the best interests of the Department of Defense.

(8) No two aerial demonstration teams of the same type will be approved for a single event. Flyovers may be authorized at an event where a flight or parachute demonstration team will perform, provided they are scheduled on days other than those authorized for the demonstration teams' performance. Static displays and other aerial activities may be authorized in conjunction with any other aerial participation.

(9) Aircraft performance record demonstrations are restricted to aircraft which have been assigned to an operational unit of a Military Service for at least 6 months in demonstrations which imply no competition among the Military Services. They may be conducted periodically in the interest of keeping the public apprised of U.S. engineering-technical capabilities in the development of aircraft altitude, speed, endurance, and individual performance or record demonstrations.

(d) *Procedures.* (1) All nonmilitary sponsors desiring Armed Forces aerial demonstrations should be requested to complete the approved DoD request format (Enclosure 1). This format may be reproduced and distributed by the Military Services.

(2) The Department of Defense (OASD(PA)) will host a scheduling conference in mid-December each year to prepare the official flight and parachute demonstration team's performance schedules for the following year.

(i) Nonmilitary sponsors desiring flight and/or parachute demonstration teams must submit an approved DoD request format (Enclosure 1) to ASD(PA) no later than September 30 to be considered for inclusion in the approved schedule for the following calendar year.

(ii) Military Departments desiring flight or parachute demonstration team performances will consolidate their requests and forward them to ASD(PA) no later than November 15 to be considered for inclusion in the approved schedule for the following calendar year.

(iii) Following the scheduling conference, a tentative schedule will be prepared by OASD(PA) and submitted to the Military Departments for review and concurrence prior to final approval by the ASD(PA). Precautions will be taken to ensure that sponsors are *not* provided any information concerning the status of their request until final approval and release of the schedule by ASD(PA). Exceptions to this policy may be made only with advance approval of the OASD(PA).

(3) Nonmilitary sponsors desiring aerial demonstrations other than flight and parachute team demonstrations should be requested to submit an approved DoD request form (Enclosure 1) to OASD(PA) no later than 30 days, and preferably 60 days, prior to the scheduled event.

(4) DoD Components desiring to conduct aerial reviews involving more than one Military Service on a military installation, or aerial reviews, flyovers, and other aerial activities else-

BEST COPY AVAILABLE

where (except as provided in § 238.8(b)(4) of this part), will forward requests to ASD(PA) as soon as practicable and will include, as a minimum, those criteria contained in § 238.5(a)(2), this part.

(5) The Military Departments will forward requests for attempts to establish aircraft performance records and to release information relative thereto to the ASD(PA) at least 45 days prior to the date of the proposed attempt. Submissions will include a description of the specific aircraft to be used and full justification for the proposed record attempt, including supporting flight and information plans. ASD(PA) will coordinate the request within the Department of Defense and with other appropriate Government departments or agencies and the National Aeronautic Association of the United States of America.

(e) *Evaluation.* Approvals or disapprovals of requests for aerial demonstrations will be based on the following:

(1) *Program criteria.* (i) Public events which are appropriate for Armed Forces aerial demonstrations include such activities as dedications of airports and facilities, aviation shows, expositions and fairs, and civic events which contribute to the public knowledge of Armed Forces aviation equipment and capabilities.

(ii) Aerial demonstrations may be authorized for military installations, including those leased by Reserve Components, in accordance with the guidance and direction provided by the ASD(PA) and the Secretaries of the Military Departments. Appearances by the flight and parachute demonstration teams on a military installation will only be approved in support of an official "Open House" program.

(iii) To minimize interference with operations and training of Armed Forces aviation units, flyovers will be approved only for the following occasions:

(A) Those events outlined in paragraphs (e)(1) (i) and (ii), above.

(B) Civic-sponsored public observances of and official ceremonies for Armed Forces Day, Memorial Day, Independence Day, and Veterans Day.

(C) Memorial or funeral services for dignitaries of the Armed Forces and the Federal Government, and for rated/designated aviation personnel of the Armed Forces as determined by appropriate Military Department regulations.

(D) Ceremonies honoring foreign dignitaries, when directed by executive order or the Secretary of Defense.

(E) Occasions primarily designed to encourage the advancement of aviation.

(2) *Sponsor criteria.* See § 238.6 (a)(2) and (b)(2).

(3) *Site criteria.* (i) Sponsors are required to obtain a Federal Aviation Agency waiver for any public demonstration by military aircraft or parachutists. The final authorization for such aerial demonstrations hinges upon the sponsor securing this waiver far enough in advance to permit adequate planning (normally no later than 60 days prior to the event).

(ii) Flight or parachute team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land where crowd control can be ensured.

(iii) Flight demonstration team aircraft must operate from suitable airfields or the site of the event must be within a reasonable distance of a staging base. In the latter case, performances are seldom authorized since the recruiting potential is significantly reduced.

(iv) For any military aircraft to operate from an airport show site, all operational requirements concerning minimum usable runway lengths and load-bearing capacity must be met.

(v) Mass parachute jumps, aerial delivery of equipment, assault aircraft demonstrations, or tactical helicopter troop landings under simulated tactical conditions will be limited to military installations. These activities, except those scheduled as part of regular training programs, are not authorized for public events.

(4) *Support criteria.* (i) While the Department of Defense does not require the sponsor to provide the Department with a public liability and property damage insurance policy, this should not deter the sponsor from ob-

taining the insurance he/she feels is necessary for protection

(ii) Civilian sponsors will be responsible for providing the following:

(A) The standard Military Services allowance for quarters and meals for Armed Forces participants, except for flyovers and other aerial activities not involving landing.

(B) If necessary, transportation, meals, and hotel accommodations for representatives of the requested unit to visit the site prior to the event.

(C) Transportation for Armed Forces participants between the site of the event and hotel and return. Additionally, if required, transportation from home station to the event and return.

(D) Telephone facilities for necessary official communications regarding the event.

(E) A recent aerial photograph, taken vertically from an altitude of 5,000 feet or higher, to the team giving the demonstration.

(F) Availability of suitable aircraft fuel at military contract prices. If fuel is not available at military contract prices, the sponsor must pay any costs over military contract prices, including transportation and handling.

(G) An ambulance and a doctor on the site during flight and parachute team demonstrations and certain other aerial activities, as determined in advance by the Military Services or the OASD(PA).

(H) Mobile firefighting, crash, and ground-to-air communications equipment at the demonstration site.

(I) Security for aircraft that land and are parked at the site during their entire stay.

(J) If necessary, aircraft for use as a jump platform by a parachute team at the location of the event.

(f) *Funding.* (1) Aerial demonstrations at public events, except for flyovers, aerial reviews, and other aerial activities not involving landing, will be provided at no additional cost to the Government.

(i) The sponsor is required to pay the standard per diem for quarters and meals, as prescribed in the Joint Travel Regulations, Volumes 1 and 2, and to provide adequate ground transportation between hotels and the site of the event and other necessary services, as determined by the participating Component and agreed to by the sponsor.

(ii) The sponsor should make the check for the required amount payable to the DoD organization which incurred reimbursable expenses. Usually, this will be the DoD organization to which the demonstration team is assigned. The Defense representative who makes the arrangements for the demonstration will provide the sponsor with the name or other identity of the organization to be cited as payee on the check. The sponsor will present the check to the appropriate demonstration team or aircraft commander upon arrival at the scheduled event. The commander, in turn, will transmit the check, expeditiously, to the accounting and finance office that supports the payee's operations.

(2) All costs are binding after a team or crew personnel have arrived at a show site, even though weather conditions or other unforeseen circumstances force the event to be canceled.

(g) *Responsibility and authority.* (1) The Assistant Secretary of Defense (Public Affairs) shall approve Armed Forces aerial demonstrations in support of community relations programs, as follows:

(i) All official flight team and parachute team demonstrations held on a military installation or elsewhere.

(ii) Flyovers held off a military installation (except as provided in § 238.10(g)(2)(ii), this part).

(iii) Aerial reviews involving more than one Military Service held on a military installation and all aerial reviews held elsewhere.

(iv) Aerial demonstrations held outside the United States which are not within a Unified or Specified Command area of responsibility.

(v) Other activities held off a military installation (except as provided in § 238.10(g)(2)(v)).

(2) The Secretaries of the Military Departments are authorized to approve aerial demonstrations in support of community relations programs by aircraft of their respective Services, as follows:

(i) Flyovers for events on military installations.

(ii) Flyovers at events off military installations for civic-sponsored observances of Armed Forces Day, Memorial Day, Independence Day and Veterans Day (except in the National Capital area).

(iii) Flyovers provided for military funerals for rated/designated aviation personnel of the Armed Forces.

(iv) Static display of aircraft held on military installations or elsewhere.

(v) Other aerial activities, as follows:

(A) Those held on military installations.

(B) Air-rescue demonstrations, team, or single parachute demonstrations (other than the U.S. Army Golden Knights), Navy Seal Team demonstrations, rappelling demonstrations, and air-to-air refueling demonstrations.

§ 238.11 Armed Forces bands, troops, and units in support of public programs.

(a) *Purpose and scope.* This enclosure is intended for use when determining the appropriateness or extent of Armed Forces participation in official Federal Government, military, or civic functions and all other community relation programs conducted in public. It governs all uniformed Armed Forces commands, organizations, units, and personnel appearing in public, including bands, musical groups, individuals, color guards, drill teams, marching units, exhibits or displays, and the loan or use of Armed Forces facilities and material in support of community relations programs.

(b) *Policy.* Armed Forces support of public programs has been developed by the Department of Defense to ensure compliance with public law, to ensure equitable distribution of resources to as many appropriate events as possible, and to avoid excessive disruption of training and operational missions of the Military Services. DoD support of public programs is authorized and encouraged when such support is in the best interest of the Department of Defense and the Armed Services. The Defense Establishment and the Armed Forces belong to the American people and thus the Department should not do for one segment of the society what it cannot do for all.

(c) *Procedures*—(1) *General.* Requests for Armed Forces support of public programs shall be addressed to the nearest military installation, giving full details on the approved DoD request format (enclosure 2), so that a decision, based on program criteria, sponsor criteria, site criteria and support criteria can be made.

(2) *National/International programs.* Requests for Armed Forces support for programs which, by their nature or because of news media coverage, could be of national or international interest will be forwarded through established command channels to the ASD(PA) for approval. Approval will be based upon program, sponsor, site, and support criteria listed above, or any recommendation or request for exception to policy by the appropriate commander.

(3) *Events in the National Capital area.* All requests for Armed Forces support of public programs within the National Capital area will be sent to the ASD(PA) for approval. Requests for Military Service bands, musical units, drill teams, color guards, etc., stationed in the Washington, D.C. area, may be made by submitting the attached approved DoD request format through appropriate command channels.

(4) *Local events.* Local military commanders may authorize support of purely local programs without further authorization from the Department of Defense. The program must be consistent with at least one condition of each of the established criteria groups in § 238.6(a) and be consistent with resource capability, operational commitments and applicable regulations.

(d) *Evaluation.* (1) When evaluating requests for Armed Forces support of public programs, the interests of the Department of Defense, the public at large, operational requirements of the Military Services, and availability of appropriate resources are prime considerations. (See § 238.6 (a) and (b).) Commitment of resources to specific programs must be balanced with the governing factors and guidelines of the basic Instruction and with requests for similar participation received from other sources. DoD support, directly or indirectly, must not: (i) Endorse or benefit selectively or favor any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, political organization, or commercial venture; or (ii) be associated with the solicitation of votes in a political election. (See § 238.6 (a) and (b).) Such sites as commercial theaters, department stores, churches, or fraternal halls are, generally, inappropriate sites for Armed Forces support. Testimonials to individuals or sectarian religious services are inappropriate programs for Armed Forces support.

(2) Support by the Armed Forces of any program may be authorized only if admission, seating, and all other accommodations and facilities are available to all without regard to race, creed, color, national origin, or sex.

(i) Support of programs sponsored by certain organizations may be authorized when the program is oriented towards the community interests as opposed to the sectarian, fraternal, or national origin aspects or objectives of the organization.

(ii) Participation in nonpublic school events is authorized when the program is clearly patriotic or educational in nature or is in support of recruiting programs.

(iii) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit, or exhibit. When admission is charged, the Armed Forces activity must not be the sole or primary attraction. (Excludes Navy and Marine Corps Band Tours.)

(3) The term "fund-raising" identifies the avowed or announced purpose of a program which, by any means, seeks to acquire money or material in excess of actual costs for charitable, civic, or other purpose. Support by the Armed Forces in an official capacity in fund-raising programs is restricted to fund-raising activities in support of recognized united, federated, joint, or other authorized campaigns (see § 238.6(a)(1)(v)). A required condition of such support will be that the sponsor of an event certifies that all profits accrued will be donated to a united, federated, or joint campaign. In view of the national interest, the Armed Forces may support sports or other public programs held for the sole purpose of raising funds for the U.S. teams competing in the Pan-American and Olympic Games. DoD policies concerning Armed Forces support of fund-raising programs are detailed in Part 237 of this title. Additional information may be found in DoD Directive 5035.1.

(4) When Armed Forces support of a public program is in the mutual interest of the Department of Defense and the sponsor, participation will be authorized at no additional cost to the Government. Additional costs to the Government—travel and transportation of military personnel, meals and quarters or the standard per diem allowance—must be borne by the sponsor.

(5) The duration of support by military units in any single program is limited in the interests of proper utilization and equitable distribution of Armed Forces manpower and resources. While an exhibit may be scheduled for the duration of a program, participation of a unit such as a military band is limited to 3 days.

(6) Armed Forces support of professional sports programs and all postseason bowl games will be authorized at no additional cost to the Government, will emphasize joint Service activity where praticable, and must support recruiting programs. Support of commercially oriented events, such as beauty pageants, Christmas parades, and motion picture premieres is not authorized.

(7) Armed Forces musical units may be authorized to provide certain specified musical presentations for public programs. The performance must not place military musicians in competition with the customary or regular employment of local nonmilitary musicians. Background, dinner, dance, or other social music is not authorized for public programs held away from a military installation. Programs which may be authorized usually include a short (15-20 minute) patriotic presentation. Musical selections consist of a medley of military or patriotic songs, appropriate honors, and music to accompany the presentation of the colors by a color guard.

(e) *Exhibits.* (1) Exhibits are both indoor and outdoor types. The Mili-

BEST COPY AVAILABLE

tary Services maintain Armed Forces exhibits which are used in their individual public affairs programs. These exhibits are maintained by the Military Departments and are provided to sponsors of events at no additional cost to the Government.

(2) Most exhibits are displayed during programmed tours which are scheduled 6 to 8 months in advance. Requests for these exhibits should be initiated well in advance of the event.

(3) Requests for Armed Forces exhibits in support of public programs should be forwarded to one of the following addressees, using an approved DoD request format:

U.S. Army

Chief of Public Affairs, Department of the Army, Washington, D.C. 20310.

U.S. Navy

Chief of Information, Department of the Navy, Washington, D.C. 20350.

U.S. Air Force

Commander, USAF Orientation Group, Wright-Patterson AFB, Ohio 45433.

(4) The exhibits used in support of personnel procurement and recruiting are governed by policy established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(f) *Armed Forces personnel, facilities, and materiel*—(1) *General.* (i) Armed Forces (including Guard/Reserve and ROTC) resurces, such as bands, troops, drill teams, color guards, installations facilities, and materiel may be effectively used to support community relations programs.

(ii) The use of military personnel as ushers, guards, parking lot attendants, runners, messengers, baggage handlers, crowd control, or other inappropriate capacities in support of public programs conducted off military installations is not authorized.

(2) *Flags.* (i) The loan of official flags of DoD Components will not be authorized without the approval of the Secretaries of the Military Departments or Heads of the other Components concerned.

(ii) In public programs for which DoD support has been authorized and at which the display of colors is appropriate, a Joint Armed Forces Color Guard will be employed, when available, using the following composition: Two Army bearers with National and Army colors; one each Marine Corps, Navy, Air Force, and Coast Guard[1] bearer with individual Service colors; and one Army and one Marine Corps rifleman as escorts.

(iii) When a Joint Armed Forces Color Guard, as specified above, cannot be formed, the senior member of the senior Service in the Color Guard will carry the national colors. DoD Components will be guided by the Table of precedence prescribed in DoD Directive 1005.8,[2] "Order of Precedence of Members of Armed Forces of the United States When in Formations," October 31, 1977.

(iv) United States military personnel may carry flags of foreign nations in official civil ceremonies when an official of the nation concerned is present in an official capacity and the official is one for whom honors normally would be rendered. In all other public programs or ceremonies, United States military personnel in uniform and in an official capacity are not authorized to carry flags of foreign nations, veterans groups, or other nonmilitary organizations.

(3) *Loan of materiel and facilities*—(i) *Materiel.* Equipment which formerly was available only from the military is now readily available from commercial sources. In considering requests for loan of military materiel, commanders must determine that similar materiel or facilities are not reasonably available from commercial sources before providing the support requested. This is particularly applicable to such items as communications, office, food-handling, and lighting equipment. Also included are construction, earth-moving, or other transportation and field equipment support. Other criteria to be considered are:

(A) The equipment must be locally available in the command, and its use for public affairs purposes must not be

---

[1] Pursuant to agreement with the Secretary of Transportation.

[2] See footnote 1 to § 238.4(d).

BEST COPY AVAILABLE

permitted to interfere with the military mission of the command.

(*B*) The public affairs program for which loan support is requested must be one in which the command is actively participating and one within the scope of its community responsibilities.

(ii) *Facilities.* Requests which do not fall within the discussion in this section shall be referred, with the DoD Component's recommendations, to the ASD(PA) for consideration. Further guidance is provided in § 238.19.

(g) *State governors' inaugural ceremonies and parades*—(1) *General.* Support by DoD Components is appropriate in public parades and in inaugural ceremonies subject to the availability of resources. To the greatest extent practicable, Armed Forces support should be joint in nature. In those cases where a Military Service desires to support an inaugural program but has no troops or resources stationed within that State, the circumstances should be reported to the ASD(PA). Bands, troop units, and equipment from outside the local area may be provided only if no additional cost to the Federal Government will be incurred.

(2) *Support considerations.* (i) Support should be limited in size and scope, bearing in mind the potential demands that may be generated from State to State. Marching units with a combined strength of no more than one platoon from each Military Service and no more than one military band are recommended guidelines. The display of equipment and vehicles in parades is encouraged.

(ii) It is recognized that the State National Guard may be ordered to State duty by appropriate State authority, although Federal funds are not made available. Such service and expenses involved are paid for by other than Federal funds. The governor of a State has the authority to utilize, at no expense to the Federal Government, national guard troop units as required in support of the inaugural parade and ceremonies.

(iii) The duties to be performed by national guardsmen in uniform shall conform to the policies of the Secretary of Defense as set forth in Part 237 of this title and this part. Use of military personnel as escorts, ushers, doormen, or drivers for nonmilitary guests or local dignitaries is not authorized.

§ 238.12 Speaking engagements.

(a) *Purpose.* This part which includes a reiteration of pertinent policy statements from Part 237 of this title, contains definitions, policy, procedural, and funding guidance concerning public speaking engagements by DoD personnel.

(b) *Definitions*—(1) *Speaking engagement.* A prearranged official Federal, State, or Municipal government; organizational; or public event at which a military or civilian member of a DoD Component speaks about a DoD subject within his or her official cognizance. Impromptu remarks by an individual delivered incidentally and simply as a part of his/her attendance at an event does not constitute a speaking engagement within the meaning of this Instruction.

(2) *DoD Speaker.* Any civilian or military member of the Department of Defense at any level and of any rank who speaks in public about a DoD subject within his/her official cognizance.

(c) *Policy.* The Department of Defense encourages qualified civilian and military officials at all levels to accept speaking invitations as an effective means of informing the public about Defense matters. DoD Instruction 5230.13,[1] "Principles of Public Information," October 23, 1973.

(d) *Procedures*—(1) *General considerations.* The following points should be considered by members of the Department of Defense prior to acceptance of a speaking invitation:

(i) Participation must not interfere with assigned duties.

(ii) Speakers must address their remarks to subjects within their official cognizance.

(iii) Views expressed must not conflict with national policy.

(iv) Speakers may not be provided for partisan political gatherings (see DoD Directive 1344.10,[1] "Political Activities by Members of the Armed

---

[1] See footnote 1 to § 238.4(d).

Forces," September 23, 1969, or fundraising events which do not meet basic DoD criteria (see Part 237 of this title and DoD Directive 5035.1, respectively).

(v) A speaker's participation must not lend an air of sponsorship to the statements of others which may be partisan in nature or contrary to national policy.

(vi) Subject matter and text may require review and clearance (see DoD Directive 5230.9, "Clearance of DoD Public Information," December 24, 1966).

(vii) Situations where the real or apparent purpose is to stage controversy will be avoided. The ASD(PA) will be consulted before speakers are provided for events in which public confrontation or debate of national policy matters is planned or likely.

(viii) Department of Defense support is not authorized if the sponsor or sponsoring organization specifically excludes any person from its membership for reasons of race, creed, color, or national origin. However, DoD support is authorized for programs sponsored by organizations whose qualifications for membership is based on national origin or sex, but only when the program so supported is oriented to the community rather than to the national origin or objective of the organization itself, and admission, seating, and all other accommodations and facilities connected with the program are available to all without regard to race, creed, color, national origin, or sex.

(ix) Acceptance of press, radio, and television interviews in conjunction with speaking engagements is encouraged, subject to the provisions of this Instruction and other pertinent public affairs Directives.

(x) Advance distribution of copies of speech texts (embargoed when necessary) may be used to gain wider dissemination of DoD information beyond an intended local audience when media coverage is anticipated. Distribution of speech texts should be made in cooperation with the host organization.

(2) *Level of acceptance.* Organizations or groups wishing to extend a speaking invitation should be encouraged to correspond directly with the Public Affairs Officer of the nearest installation likely to have someone assigned who is cognizant of the subject matter to be discussed. The Fact Sheet (enclosure 3) and Speaker Request Formats (enclosure 4) may be utilized when replying to queries concerning speakers. DoD Components shall channel speaking invitations to appropriate officials nearest the site of the event.

(3) *Presidential representatives.* The Department of Defense is sometimes required to furnish a military officer to represent the President of the United States at occasions where "remarks" or "an address" are required. The minimum appropriate grade, in this circumstance, is a general or flag officer unless there are overriding practical considerations precluding general or flag officer availability.

(e) *Funding.* (1) Speaking engagements normally will be at Government expense.

(2) Acceptance of a gratuity as defined in Part 40 of this title, a fee, or an honorarium is prohibited. Reimbursement for necessary travel and living costs may be accepted from the sponsoring organization in lieu of reimbursement by the Government, in accordance with Joint Travel Regulations (Volumes 1 and 2). Consult the local finance or disbursing officer for specifics.

(f) *Reports.* (1) The Office of the Assistant Secretary of Defense (Public Affairs) requires a monthly speakers' report covering a projected 60-day period for all accepted speaking engagements of senior civilian and military representatives of the DoD Components down through Deputy Assistant Secretary and three-star rank. This report is due no later than the 24th day of each month, attention Directorate for Community Relations. The report will include the following information:

(i) Name, rank, and title of speakers

(ii) Date of speaking engagement

(iii) Place of speaking engagement

(iv) Host organization

(2) This reporting requirement has been assigned Report Control Symbol DD-PA(M)979.

(3) From the above information, the Directorate for Community Relations, Office of the Assistant Secretary of Defense (Public Affairs), will publish a monthly speakers' schedule.

§ 238.13 National organizations.

(a) *Policy.* OASD(PA) serves as the primary point of contact within the Department of Defense for all types of national organizations. In addition, on matters relating to the provision of information of DoD policies, programs, budgets, plans, and activities, OASD(PA) is the principal point of contact with business and industry. Establishment of this focal point is designed to avoid duplication and ensure that a coordinated DoD view is expressed when responding to the nontechnical needs of these organizations and the business/industrial community.

(b) *Procedures.* (1) OASD(PA) serves as the principal Department of Defense point of contact for all national organizations (to include their local and regional chapters in the National Capital area) on all matters except:

(i) Requests for information emanating from an organization and bearing directly on an individual DoD Component.

(ii) Requests for speakers.

(iii) Those matters involving contractual or consulting relationships.

(iv) Matters pertaining to scientific and technical information. Scientific and technical information services are administered by the Defense Logistics Agency.

(2) Except in the National Capital area, local and regional chapters of national organizations may deal directly with local commanders as delegated by appropriate authority. In the National Capital area, local and regional chapters shall be referred to OASD(PA) when they request support from the Department of Defense or any of its elements. When appropriate, OASD(PA) will refer the matter to whatever DoD Component can best fulfill the organization's request.

(3) Authority for direct communication and liaison with organizations directly associated with specific interests of a single DoD Component is delegated (see § 238.8(d)(2) of this part) to that Component. Individual Components which maintain liaison with such organizations are required to carry on their activities in accordance with the letter and the spirit of policies set forth in Parts 237, 91, and 40 of this title, respectively).

(4) OASD(PA) periodically provides to national organizations information concerning policies, programs, budgets, and other activities of the Department of Defense. DoD Components are encouraged to provide informative material to OASD(PA) for inclusion in these periodic mailings. Examples of Component-related material which would be proper for distribution to organizations through OASD(PA) include posture statements, significant congressional testimony, internal publications outlining important programs which will have a wide-ranging impact, and other major policy pronouncements such as speeches.

(5) Policies regarding liaison and communication with the support for organizations representing business or commercial interests are outlined in Part 237a of this title which also covers relationships with businesses, industries, and other commercial enterprises.

§ 238.14 Armed Forces Day.

(a) *Purposes.* This enclosure contains guidelines concerning the annual observance of Armed Forces Day. (See Part 237 of this title.)

(b) *Policy.* (1) By Presidential proclamation, Armed Forces Day is observed on the third Saturday of each May. It provides a special occasion to satisfy public interest in the Defense establishment and to demonstrate the unity and common purpose of the Armed Forces in the fulfillment of our national security requirements.

(2) In keeping with the spirit of unification as set forth in the National Security Act of 1947, as amended, participation by military units in the observance of the birthdays of individual DoD Components or any other day or days of significance to a single Component, its subordinate elements, or auxiliaries will not be undertaken away from military installations without the

specific authorization of the Assistant Secretary of Defense (Public Affairs).

(3) The United States Coast Guard is included, where feasible, in observances of Armed Forces Day, pursuant to agreement with the Secretary of Transporation.

(c) *Procedures.* (1) The Assistant Secretary of Defense (Public Affairs) is responsible for coordinating Armed Forces Day programs at the national level and for issuing annual guidance for the conduct of each year's observance.

(2) Cooperation with communities and organizations planning observances of Armed Forces Day is encouraged.

(3) DoD Components shall extend hospitality to the general public by hosting "Open House" or similar activities on military installations and ships.

(4) In localities and situations where two or more Military Services are represented, joint participation in community sponsored programs is encouraged.

(5) Armed Forces Day will be treated as a national holiday for purposes of determining support authorized by Part 237 of this title and this part.

(6) Armed Forces Day will be observed in overseas areas in the manner determined most suitable by the Commander-in-Chief of the Unified or Specified Command concerned. The observance may be held on military installations for U.S. personnel and dependents and may be open to the general public or conducted elsewhere in the host nation. These observances will not be combined with other U.S. or foreign holidays or observances.

(d) *Funding.* DoD Components shall, within their available funds, defray the expenses necessay for the observance of Armed Forces Day within their respective areas of responsibility.

§ 238.15 Veterans Day observances and national conventions of national veterans organizations.

(a) *Policy.* It is DoD policy to provide military support for:

(1) Veterans Day observances at communities designated as regional sites by the Veterans Day National Committee of the U.S. Veterans Administration;

(2) Smaller local observances held in communities not so designated; and

(3) National conventions of national veterans organizations.

(b) *Procedures*—(1) *Veterans Day observances.* (i) The Administrator of Veterans Affairs is normally designated by Presidential proclamation as the Chairman, Veterans Day National Committee. The objective of this committee, comprised of representatives from major veterans organizations, is to stimulate and perpetuate national public interest in honoring all veterans of all wars on Veterans Day. Each year, this committee designates certain communities as regional sites for the observances of this national holiday. Department of Defense supports these observances by appointing a DoD Coordinator and approving military support.

(ii) Regional sites are designated to ensure that proper priority and an appropriate level of support are available for these major observances.

(2) *National Veterans organizations conventions.* Each year the national veterans organizations request military support for their national conventions. The support requested varies with each organization. At conventions with multi-Service support, a DoD Coordinator will be assigned by OASD/PA; while at smaller conventions, one Service project officer may coordinate appropriate Armed Forces support.

§ 238.16 Presidential wreath-laying ceremonies.

(a) *General.* Over the course of years the Office of The Military Assistant to the President has coordinated the annual placement of Presidential Wreaths at the tombs, burial sites, and/or monuments of all former Presidents. The repeated placement of these wreaths through the years led to the development of the "President's Approved Wreath List" (Enclosure 5).

(b) *Procedures.* (1) Enclosure 5 contains the President's Approved Wreath List, including name, place, and date for wreath-laying ceremonies for each former President.

(2) Enclosure 5 also contains a list of Military Departments responsible for providing a representative of the President to place each wreath.

(3) The minimum appropriate military grade for this program is general or flag rank, unless overriding considerations preclude the availability of a general or flag officer.

(c) *Responsibilities.* (1) The ASD(PA) is responsible for overall coordination of DoD support for this program.

(2) Secretaries of the Military Departments will designate appropriate Presidential representatives, in accordance with the listing contained in enclosure 5, to place wreaths in honor of former Presidents. The name, rank, title, address, and telephone number of each designated representative will be forwarded to the ASD(PA) at least 60 days in advance of the month of wreath placement.

(3) The Military Assistant to the President will make necessary arrangements to provide each wreath.

(4) Names of designated Presidential representatives will be forwarded, via the Special Assistant to the Secretary of Defense, to the Military Assistant to the President, who will coordinate final details of each ceremony.

(d) *Reports.* The report required in § 238.16(c)(2) is assigned Report Control Symbol DD-PA(AR)1348.

§ 238.17 Sports activities.

(a) *Policy.* (1) DoD Directive 1330.4 establishes the Interservice Sports Committee (ISC) which acts for the ASD(PA) in all matters pertaining to interservice competition and joint Military Service participation in national and international sports. Each Military Service is represented on the committee.

(2) Athletic activities of the Military Service academies that are conducted away from military installations shall be governed by the general policy contained in Part 237 of this title and this part.

(b) *Responsibilities.* Among other functions, the ISC as Executive Agent, for the DoD shall:

(1) Act for the Department of Defense on matters pertaining to sports involving more than one Military Service.

(2) Plan and conduct all interservice sports championships, and establish and monitor all joint Military Service efforts in support of national and international sports activities.

(3) Coordinate with Department of State, as required by Part 347 of this title, and other Government agencies and national sports organizations on sports tours and clinics in foreign countries which propose to utilize U.S. military personnel.

(4) Provide representation for the Department of Defense on related Government committees.

(5) Coordinate and maintain liaison with national sports governing bodies in matters of mutual interest to the Military Departments.

(6) Secure Department of State approval for military participation in international sports competition, and monitor military sports programs to ensure compliance with the provisions of Part 237 of this title.

(7) Serve as a contact point for the entire Defense establishment on questions pertaining to sports.

§ 238.18 DoD coordinators.

(a) *Purpose.* Some community relations programs involve support by more than one Military Service. Events of this nature include major national veterans conventions, regional Veterans Day observances, major air shows, large civic festivals, inaugurals, etc. The purpose of this enclosure is to provide guidelines for the coordination of such programs.

(b) *Procedures.* (1) When military support of a program sponsored by a civilian organization is furnished by more than one Military Service, and the magnitude of the support warrants DoD coordination, one Military Department will be requested by OASD(PA) to nominate an officer located in the area of the program to serve as the coordinator of DoD support.

(2) After being nominated, the officer will be designated as the DoD Coordinator by OASD(PA). The DoD Coordinator will be responsible for coordinating all military support, includ-

BEST COPY AVAILABLE

ing support by National Guard/Reserve components, within the limitations set forth in Part 237 of this title, this part, and other specific guidelines prepared by OASD(PA) and provided to him/her upon designation as DoD Coordinator. The DoD Coordinator is authorized direct liaison with OASD(PA).

(3) Also, OASD(PA) will request appointment of project officers, normally located within the area of the event, from the Military Departments providing support for the program. These Service project officers will assist the DoD Coordinator.

(c) *Reports.* The DoD Coordinator will prepare an after-action report and forward it to OASD(PA) within 30 days following the program. Report Control Symbol DD-PA(AR)1348 applies.

§ 238.19 Miscellaneous public affairs-related activities.

This part contains a list of Public Affairs-related activities conducted by certain DoD Components under authority other than that delegated to the ASD(PA).

(a) *Employment of military resources in natural disaster emergencies within the U.S., its territories and possessions.* (1) DoD Directive 3025.1,[1] "Employment of Military Resources in Natural Disaster Emergencies Within the United States, Its Territories and Possessions," August 30, 1971, governs.

(2) The Secretary of the Army is designated as the DoD Executive Agent for military support in disasters.

(3) The ASD(PA) is responsible for associated public affairs activities.

(b) *Foreign disaster relief operations.* (1) DoD Directive 5100.46,[1] "Foreign Disaster Relief," December 4, 1975, governs.

(2) The ASD(ISA) is responsible for overall coordination of DoD support.

(3) The ASD(PA) is responsible for public affairs plans and activities. He is the single point of contact with the Department of State/AID or the International Communications Agency (ICA) on associated public affairs matters.

(c) *Use of DoD facilities or resources for other than public affairs purposes.* (1) The use of any DoD facility or resource to accomplish a community relations objective (see Part 237 of this title) is considered use for a public affairs purpose. Any other use of a DoD facility or resource is not a public affairs matter.

(2) Policies and procedures governing the use of DoD facilities or resources for other than public affairs purposes are the responsibility of the ASD(MRA&L), the Secretaries of the Military Departments, or the Directors/Commanders of other DoD Components.

(d) *Transportation.* (1) Policy governing the use of military carriers for public affairs purposes is contained in DoD Instruction 5435.2.

(2) Travel or transportation for public affairs purposes is defined as any travel or transportation of individuals, groups, or materiel undertaken as a result of a request to or an invitation from and authorized by competent authority in the Department of Defense in the interest of adding to the public understanding of DoD activities. It includes travel or transportation involving individuals or things, military or civilian, Government or non-Government, U.S. or foreign requests. It may be reimbursable.

(3) All other uses of military carriers are governed by policies promulgated by the ASD(MRA&L).

(e) *Organizational relationships.* Direct liaison channels exist between certain organizations and OSD agencies other than OASD(PA) in cases specifically provided for under public law or DoD Directive. Examples are:

(1) *United Service Organization*—ASD(MRA&L)—DoD Directive 1330.12,[1] "United Service Organizations, Inc." April 4, 1979.

(2) *American National Red Cross*—ASD(MRA&L)—DoD Directive 1330.5,[1] "American National Red Cross," August 16, 1969.

(3) *Boy Scouts of America and Girl Scouts of America.* (i) Nonappropriated fund activities—ASD(MRA&L).

(ii) Where authorized, priorities for travel on military carriers—ASD(MRA&L)—DoD Regulation

---

[1] See footnote 1 to § 238.4(d).

BEST COPY AVAILABLE

4515.13-R,[1] "Air Transportation Eligibility," February 1975.

(iii) Use of military transportation and facilities to include support for International and National Jamborees—ASD(MRA&L).

(4) *United Seamen's Service*—ASD(MRA&L)—DoD Directive 1330.16,[1] "United Seamen's Service (USS)," July 10, 1971.

(5) *Veterans Organizations* (i) Service Discharge matters—ASD(MRA&L); Military Departments.

(ii) Donation of Surplus Equipment—ASD(MRA&L) DoD Manual 4160.21-M,[1] "Defense Disposal Manual," June 1973.

ENCLOSURE 1—FORMAT REQUEST FOR AERIAL DEMONSTRATION

This format is used to request Armed Forces aerial demonstrations at public events. The information is required to evaluate the event for appropriateness and compliance with DoD policies and for coordination with units involved. Please complete *all* sections.

Each year, in December, the Department of Defense hosts a flight and parachute demonstration team scheduling conference to prepare the annual schedule for the following calendar year for the U.S. Navy Blue Angels, the U.S. Air Force Thunderbirds, and the U.S. Army Golden Knights. All requests for these demonstration teams must arrive at the Office of the Assistant Secretary of Defense, Public Affairs (OASD/PA), no later than September 30, to be considered at the scheduling conference. Requests for other aerial demonstrations (flyovers, static displays, etc.) must arrive at OASD(PA) a minimum of 30 days in advance of the event and preferably 60 days.

DoD policies require that aerial demonstrations at public events will be provided at no additional cost to the Government. The sponsor is required to pay the standard Military Services allowance for quarters and meals for Armed Forces participants and for certain other services determined in advance by the Military Services and agreed to by the sponsor. All costs are binding after a team or crew personnel have arrived at a show site, even though weather conditions or other unforeseen circumstances force the event to be canceled.

Section A: General

1. Title of event.

————————————————

2. Town or city: ———— State: ————

3. Place (airport, fairgrounds, etc.):

————————————————

4. Inclusive dates of event:

————————————————

5. Sponsoring organization:

————————————————

6. This request is for: (please circle the appropriate event):

a. U.S. Navy Blue Angels
Performance Dates ————————————
OR
U.S. Air Force Thunderbirds
(or) ————————————

(The standard Military Services allowance for quarters and meals for either team will cost $2,100.00 for each day a team is scheduled at your event.)

(or) Alternate Dates————————————

b. U.S. Army Golden Knights
Performance Dates ————————————
(or) ————————————

(The cost will vary dependent upon travel time to and from the demonstration site, and the number of participants. *See note at bottom of this page for detailed explanation of how costs are computed.*)

(or) Alternate Dates————————————

c. Aircraft Flyovers
Performance Dates ————————————
(No cost to sponsor)

d. Static Display
Performance Dates ————————————

(The standard Military Services allowance for quarters and meals is $35.00 per day per crewmember.)

e. Other: ————————————
Performance Dates ————————————

NOTE: U.S. Army Golden Knights: Under normal conditions, the team is composed of nine jumpers, three aircraft crewmen, a ground controller, a narrator and information specialist. They are reimbursed by the Government at an average cost of $30.00 per individual per 24-hour day, for each performance day required to support your event (average team cost per performance day: 15 personnel × $30 = $450.00). Travel day reimbursement required to support your event is normally an average of $15.00 per individual per day, for each day of travel to and from Fort Bragg, North Carolina (average team cost per travel day: 15 personnel × $15 = $225.00). The sponsor will be advised by the Golden Knights, in advance, of the exact cost which the Government must be reimbursed.

Section B: Program

1. Purpose of this event:

————————————————

---

[1] See footnote 1 to § 238.4(d).

————————————————————

————————————————————

————————————————————

2. Expected attendance: ——————
Previous year's attendance: ——————

3. Admission charge: $——
Charge for parking: $——
Charge for seating (if not included in admission charge): $——

a. Will prize monies be given for any purpose at this event? ——————

b. Source of prize monies: ——————

c. Is this event used to promote funds for any purpose? ——————

d. Disposition of profits which may accrue: ——————

4. Will admission, seating and all other accommodations and facilities connected with this event be available to all persons without regard to race, creed, color, sex, or national origin? ——————

5. Will sponsor consult with local Military Service recruiters and support, at no charge, military recruiting activities at the site of the event? ——————

6. This event (is) (is not) a civic occasion and (does) (does not) have the official backing of the Mayor.

7. Has a demonstration team ever performed at your event before? ——————

a. Which team? ——————————

b. Year of last performance: ——————

Section C: Site

1. Flight or parachute team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land.

a. Specific location of event:

————————————————————

b. Length of active runway:

————————————————————

2. Flight and parachute team demonstrations must adhere to FAA regulations which specify that spectators are not to be permitted within 1,500 feet of an area over which flight demonstrations take place, or within 250 feet of a jump area over which parachutists are performing.

a. What type of crowd control is planned?

————————————————————

————————————————————

3. Flyovers and flight and parachute team demonstrations require that sponsors secure FAA clearance or waiver.

a. Does the FAA representative in your area agree that your aviation event is feasible for the type of Armed Forces aerial demonstrations requested? ——————

b. Will sponsor secure FAA clearance or waiver at least 60 days prior to event? ——————

4. Sponsor agrees to provide to the demonstration flight or parachute team commander, upon request, a recent aerial photograph, taken vertically from an altitude of at least 5,000 feet.

Section D: Support

Indicate that the sponsor understands and will provide the following:

1. Team costs as outlined in section A:

————————————————————

2. The standard Military Services allowance for quarters and meals for Armed Forces participants (if not included in team costs):

————————————————————

3. If required, transportation, meals, and hotel accommodation cost for representatives of the requested unit to visit the site prior to the event:

————————————————————

4. If required, transportation costs from home station to the event and return for all participants:

————————————————————

5. Transportation costs for all participants between site of the event and hotel:

————————————————————

6. Telephone facilities for necessary official communications at the site of the event:

————————————————————

7. Security for aircraft that land and are parked at the site during their entire stay:

————————————————————

8. Mobile firefighting, crash, and ground-to/air communications equipment at the demonstration site for flight and parachute demonstrations and static display aircraft:

————————————————————

9. Suitable aircraft fuel at military contract prices. (Sponsor must pay all costs, including transportation and handling, if necessary, over military contract prices if fuel is not available at such prices):

————————————————————

10. An ambulance and doctor on the site during flight and parachute demonstrations and during certain other types of aerial activities as determined in advance by the Military Services or OASD(PA):

————————————————————

Section E: Sponsor

1. Sponsor (is) (is not) a civic organization.

2. The sponsoring organization (does) (does not) specifically exclude any person from its membership based on race, creed, color, or national origin.

3. *Sponsor's Representative:* (Authorized to complete arrangements for Armed Forces aerial demonstrations and responsible for reimbursing the U.S. Government for accrued expenses when required)
Name: ——————————
Address: ——————————
City:——State:——Zip:——
Position with sponsoring organization:
————————————————————
Telephone: Office: ( ) ——————
Home: ( ) ——————————

4. Name and address of any Armed Forces representative or Government official with whom you have discussed possible participation:

————————————————

————————————————

Certification

I certify that the information provided in sections A. through E. is complete and correct to the best of my knowledge and belief. I understand that representatives of the Military Services will contact me to discuss arrangements and costs involved prior to final commitments.

Signature: ————————————

(Sponsor's representative) ——————

Date of Request: ——————————

Mail to: Directorate for Community Relations, OASD(PA), Room 1E 776, The Pentagon, Washington, D.C. 20301.

ENCLOSURE 2—REQUEST FORMAT—ARMED FORCES PARTICIPATION IN PUBLIC EVENTS

This format is used to request all Armed Forces Band, Troop, and Exhibit participation in public events. The information is required to evaluate the event for appropriateness and compliance with DoD policies and for coordination with the units involved. *Complete section A and only those other sections that apply to your event.*

Section A: General

1. Title of event: ——————————

Town or City: ——— State: ———

————————————————

Date: ——— Time—from: —— to: ——

Place: (Auditorium, convention hall, etc.)

————————————————

2. Sponsor: ——————————————

3. The sponsor (is) (is not) a civic organization and the event (has) (does not have) the official backing of the mayor.

4. The sponsoring organization (does) (does not) exclude any person from its membership or practice any form of discrimination in its functions based on race, creed, color, or national origin.

5. Sponsor's representative authorized to complete arrangements for Armed Forces participation:

Name: ——————————————

Address: —————————————

City, State: ———— Zip: ——

Telephone: (Office) ( ) ——— (Home) ( ) ———

6. Purpose of this event (explain fully):

————————————————

7. Expected attendance: ————————

8. Is this event being used to raise funds for any purpose?

————————————————

9. Admission charge: ——————————

Charge for seating: ——————————

10. Disposition of profits which may accrue:

————————————————

11. Will admission, seating, and all other accommodations and facilities connected with the event be available to all persons without regard to race, creed, color, sex, or national origin?

————————————————

12. Will the standard Military Services allowance for *quarters* and *meals* be provided by the sponsor for Armed Forces participants?

————————————————

13. Will transportation at sponsor's expense be provided for Armed Forces participants between the site of the event and hotel?

————————————————

If required, will transportation be provided from home station to the event and return?

————————————————

14. Will telephone facilities, at sponsor's expense, be made available for necessary official communications regarding the event?

————————————————

15. It may be necessary for representatives of the requested unit to visit the site prior to the event. Will transportation, meals, and hotel accommodations be provided by the sponsor?

————————————————

Section B: Bands and Troops

1. This request is for (check appropriate line(s)):

Music: ——————————————

Troops: ——————————————

Other: ——————————————

2. If you desire a certain musical unit, troop unit, or type of equipment, please specify:

————————————————

NOTE: Standard Military Service allowances for quarters and meals—$35.00 per day per person. Bands will have approximately 50 members as a minimum.

3. If a musical unit is requested and an outdoor concert is planned, will there be a bandshell or bandstand?

————————————————

4. Type of electric current available:

110V —— 220V —— Amps ——

Section C: Exhibits

1. Specify type of exhibit(s) desired:

————————————————

2. If the event is indoors:

Area available for exhibit is —— feet long and —— feet wide; Ceiling height: ——; Type of floor (wood, concrete) ——; Floor loading capacity: ——; Electric current 110V —— 220V —— Amps ——; Size of doorway through which exhibit can be brought into building: —— feet high; —— feet wide. Size and load limits of freight elevators if event is on other than ground floor: —— feet wide; —— feet high; —— feet deep; load limit: ——.

3. If the event is outdoors:

Area available for exhibit is —— feet long and —— feet wide; Type of surface (sod, paved, gravel) ——; Type of electric current available: 110V —— 220V —— Amps ——; Obstructions to hinder unloading (high curbs, wires, trees):

4. Can forklift, C-2 wrecker or crane be made available for handling exhibits at no additional cost to the Government?

5. Will electric power, necessary services for connections, and other required utilities be provided by the sponsor?

6. Will police escorts through congested areas be required?

7. Will guards be provided for equipment and displays?

8. Is parking space available for tractors and trailers?

9. Name and address of any Armed Forces representative or Government official with whom you have discussed possible participation:

Certification

I certify that the information I have provided here is complete and correct to the best of my knowledge and belief. I understand that representatives of the Military Services will contact me to discuss arrangements and costs involved prior to final commitments.

Signature: (Sponsor's Representative)

Date of Request:

Return this request to:

ENCLOSURE 3—FACT SHEET

(Speaking Engagements by DoD Personnel.)

1. The Department of Defense encourages qualified civilian and military officials at all levels to accept speaking invitations as an effective means of informing the public about Defense matters by developing understanding and stimulating patriotic spirit.

2. DoD personnel may accept speaking invitations provided they adhere to the following guidelines:

a. Participation must not interfere with assigned duties.

b. Speakers must address their remarks to subjects within their official cognizance.

c. Views expressed reflect national policy.

NOTE: This requirement exists so that Government employees, when discussing Government business, may accurately explain official policy.

d. Speakers may not participate in partisan political gatherings.

e. DoD speaker participation in fund-raising efforts will be limited to the programs of the Combined Federal Campaign, to such appeals as the President may authorize, and to the Military Service aid societies. Note: Support for local fund-raising programs other than those described above is authorized only when the fund-raising program, is, in fact, *local* in nature and is of community-wide interest and benefit.

f. Their participation must not lend an air of sponsorship to the statements of others which may be partisan in nature and/or contrary to national policy.

g. Situations where the real or apparent purpose is to stage controversy will be avoided.

h. Speakers may not accept invitations when the sponsor or sponsoring organization specifically excludes any person from its membership for reasons of race, creed, color, or national origin. However, DoD support is authorized for programs sponsored by organizations whose qualifications for membership is based on national origin or sex when the program so supported is oriented to the community rather than to the national origin or sex-oriented aspects or objectives of the organization itself; and when admission, seating, and all other accommodations and facilities connected with the program are available to all without regard to race, creed, color, national origin, or sex.

i. Speakers may not accept gratuities, fees, or honoraria. Reimbursement for necessary travel and living costs may be accepted in lieu of reimbursement by the Government.

3. Speaking invitations should be directed to the Public Affairs Officer of the nearest military installation. The Public Affairs Officer would appreciate information of the type outlined on the enclosed speaker request form.

4. Inquiries may also be addressed to Director for Community Relations, Office of the Assistant Secretary of Defense (Public Affairs), The Pentagon, Washington, D.C. 20301.

ENCLOSURE 4—SPEAKER REQUEST FORMAT

I. Sponsoring Organization(s)

Name(s) ——————————
Person to contact relative to this request (Name, address & telephone number) ——

II. Meeting

Time:
Date ——————————
Meeting will begin at ——————————
Meeting will end at ——————————
Place:
City ——————————
Hall or Auditorium ——————————

III. Speech

Subject of speech ——————————
Time to be allowed ——————————
Will there be a question & answer period following speech? ——————————
Time to be allowed for speech ——————————

IV. Details of the Program

Other Speakers (Please list in order of appearance)
Speaker ——————————
Subject ——————————
Length of Speech ——————————

V. Audience

Anticipated Size ——————————
Composition of audience (teachers, businessmen, etc., or general public) ——————————

VI. Publicity

Will the meeting be open to the press? ——————————
Will the speech be broadcast? Will it be taped, filmed, or otherwise recorded? ——————————

VII. Miscellaneous

Would acceptance of this invitation place the DoD speaker in violation of any of the guidelines contained in paragraphs 2.a. through i. of the accompanying Fact Sheet?

Give any other significant information which may be helpful in the selection of an appropriate speaker. If more space is needed use continuation sheets.

Signed ——————————

ENCLOSURE 5—PRESIDENT'S APPROVED WREATH LIST

Birth date	Former President	Location	Responsible Military Dept
Jan. 7	Millard Fillmore	Buffalo, NY	Air Force
Jan. 29	William McKinley	Canton, OH	Army
Jan. 30	Franklin D. Roosevelt	Hyde Park, NY	Army
Feb. 9	William H. Harrison	North Bend, OH	Air Force
Feb. 12	Abraham Lincoln	Lincoln Memorial	Army
		Springfield, IL	Army
3d Monday in February (Official Holiday)	George Washington	Mt. Vernon, VA	Army
Mar. 15	Andrew Jackson	Nashville, TN	Army
Mar. 16	James Madison	Montpelier, VA	Navy (U.S. Marine Corps)
Mar. 18	Grover Cleveland	Princeton, NJ	Army
Mar. 29	John Tyler	Richmond, VA	Army
Apr. 13	Thomas Jefferson	Jefferson Memorial	Army
Apr. 23	James Buchanan	Lancaster, PA	Army
Apr. 27	Ulysses S. Grant	New York, NY	Army
Apr. 28	James Monroe	Richmond, VA	Army
May 8	Harry S. Truman	Independence, MO	Army
May 29	John F. Kennedy	Arlington Cemetery	Army
July 4	Calvin Coolidge	Plymouth, VT	Army
July 11	John Quincy Adams	Quincy, MA	Navy
Aug. 10	Herbert C. Hoover	West Branch, IA	Army
Aug. 20	Benjamin Harrison	Indianapolis, IN	Army
Aug. 27	Lyndon B. Johnson	LBJ Ranch, TX	Air Force
Sept. 15	William H. Taft	Arlington Cemetery	Army
Oct. 4	Rutherford B. Hayes	Freemont, OH	Army
Oct. 5	Chester A. Arthur	Albany, NY	Air Force
Oct. 14	Dwight D. Eisenhower	Abilene, KS	Army
Oct. 27	Theodore Roosevelt	Oyster Bay, NY	Navy
Oct. 30	John Adams	Quincy, MA	Navy
Nov. 2	James K. Polk	Nashville, TN	Army
Nov. 2	Warren G. Harding	Marion, OH	Army

ENCLOSURE 5—PRESIDENT'S APPROVED WREATH LIST—Continued

Birth date	Former President	Location	Responsible Military Dept
Nov 19	James A. Garfield	Cleveland, OH	Army
Nov 23	Franklin Pierce	Concord, NH	Army
Nov 24	Zachary Taylor	Louisville, KY	Army
Dec 5	Martin Van Buren	Kinderhook, NY	Army
Dec 28	Woodrow Wilson	Washington Cathedral	Army
Dec 29	Andrew Johnson	Greeneville, TN	Army

PART 239—HOMEOWNERS ASSISTANCE PROGRAM—APPLICATION PROCESSING

Sec.
239.1 Purpose.
239.2 Applicability and scope.
239.3 Objective and policy.
239.4 Procedures.
239.5 List of homeowners assistance field offices.

APPENDIX A-AGREEMENT, HOMEOWNERS ASSISTANCE PROGRAM AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AUTHORITY: Sec. 1013(f), 80 Stat. 1255, 1292; 42 U.S.C. 3301, 3302, 12 U.S.C. 1715n.

SOURCE: 33 FR 2565, Feb. 3, 1968, unless otherwise noted.

§ 239.1 Purpose.

This part establishes policy and procedures for (a) providing information on eligibility requirements and on benefits available under the Homeowners Assistance Program authorized by Pub. L. 89-754, Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1290) and (b) initial processing of applications for assistance under the Program.

§ 239.2 Applicability and scope.

The provisions of this part apply to all Department of Defense components. The programs encompasses DoD military and civilian personnel as well as affected personnel of other Federal agencies.

§ 239.3 Objective and policy.

(a) It is the objective of the DoD to assure that all applications for assistance under the program are given full consideration and that benefits under the program are extended to all homeowners who are determined to be entitled to assistance in accordance with applicable policies and procedures.

(b) Information on the program will be disseminated on the broadest possible basis by making full use of military and public news media and by distributing a fact sheet,[1] with an application form (DD Form 1607)[1] through military installations and offices and through other Government agencies where practicable.

(c) All possible assistance will be given to prospective applicants by explaining the program as described in the fact sheet, verifying employment or military service records, and advising in the preparation of the application form.

§ 239.4 Procedures.

(a) Pursuant to the provisions of DoD Directive 5100.54, "Homeowners Assistance Program," December 29, 1967[1] the Department of the Army will establish a central office to administer, manage, and execute the program under policies and procedures prescribed by the Assistant Secretaries of Defense (Installations and Logistics) or (Comptroller). In implementing the program that office or field components thereof will take all appropriate actions, including but not limited to:

(1) Determination that a specific installation meets the requirements of Pub. L. 89-754, Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1290); (2) determination as to the eligibility of each applicant; (3) determine and advise as to the most appropriate type of assistance for each applicant; (4) determine amounts to be paid and make such payments or, when appropriate, au-

---

[1] Filed as part of original document.

BEST COPY AVAILABLE

thorize and arrange for Federal acquisition of the applicant's property; and (5) maintain such records and prepare such reports as may be necessary and/or required by ASD (I&L) and ASD (Comp). Field offices will be established at convenient locations throughout the United States to execute various functions of the central office as may be designated.

(b) Pursuant to the provisions of DoD Directive 5100.54, "Homeowners Assistance Program," December 29, 1967[1] the Department of the Army will establish an appeals procedure and will adjudicate appeals from applicants previously determined to be ineligible for assistance as well as from those who are dissatisfied with action on their claims.

(c) Each Military Department and Defense Agency will appoint at least one representative at headquarters level to work with the central office and the Offices of ASD (I&L) and ASD (Comp) in order to insure that the operation of the program is effective insofar as that Department or Agency is concerned. Each military installation will establish liaison with the nearest field office to obtain any further guidance or assistance desired.

(d) Each Department of Defense component will be furnished an initial supply of the application form and related fact sheet for distribution on a worldwide basis. An appropriate supply thereof will be distributed to each installation having a military or civilian personnel officer and also to such other activities and establishments as recruiting offices, reserve training centers, procurement offices, radar and missile sites, quality control offices, communications stations, etc., so that each may serve as a source of information on the program. Subsequent supplies of the application form and fact sheet will be procured by each DoD component as required.

(e) Each installation or establishment not having a military or civilian personnel officer will be prepared to discuss the information contained in the fact sheet with each prospective applicant and to direct him to the nearest installation having a personnel or industrial relations officer for a more detailed explanation of the eligibility requirements and for initial processing of his application.

(f) Each installation or establishment having a military or civilian personnel officer will insure that such officers, or other appropriate officers or officials, are designated to:

(1) Provide information on the program in response to all inquiries, whether from prospective applicants or other interested parties. This will include explaining the purpose of the program, discussing eligibility requirements and benefits, providing copies of the fact sheet and application forms, and referring applicants to legal assistance officers for answers to questions of a legal nature.

(2) Advise applicants in filling out Parts I and II of DD Form 1607[1] (emphasizing the need for accuracy and answering all pertinent questions) and in determining what documents and other material would be acceptable as proof of homeownership and occupancy.

(i) Evidence of homeownership may include contract of sale or deed to the applicant, receipts for mortgage and tax payments, etc. as well as contract of sale or deed of conveyance from the applicant, record of foreclosure, etc. if the home has been disposed of.

(ii) Evidence of occupancy of the home by the applicant may include receipted utility bills, appointment affidavit (Standard Form 61), official correspondence or other Government forms showing the officially recognized residence address.

(iii) Documents submitted in evidence of homeownership and occupancy should be notarized or certified true copies which are complete, accurate, and legible. Certification by the applicant will be acceptable. Note that generally original copies should not be submitted because DoD cannot be responsible for the safekeeping or return of original documents.

(3) Upon receipt of a DD Form 1607[1] with Parts I and II completed, execute Part III of the form indicating the results of review of the applicant's service or employment. Official personnel records will be the only source of

---

[1] Filed as part of original document.

BEST COPY AVAILABLE

proof of service or employment; when such records are not available locally, they will be reviewed by reference to the National Personnel Records Center in St. Louis, to the personnel office at the applicant's current place of military service or Federal employment, or to any other office where the records are held.

(i) If the review verifies that the applicant was serving or employed after November 1, 1964, or meets prescribed exceptions to that date the personnel officer or other appropriate official will forward to the appropriate field office the completed DD Form 1607[1] with all supporting documents, in triplicate, together with a return envelope addressed to the applicant, for use by the field office in acknowledging receipt of the application. The application will be forwarded to the field office having jurisdiction for the purpose of this program over the base or installation where the applicant was serving or employed at the time of the closure announcement. The list of States (§ 239.5), or parts thereof, covered by each field office will be used for this purpose. The map[1] may also be used as an aid in this determination.

(ii) If the review does not verify the applicant's statement of service or employment as prescribed in paragraph (f)(3)(i) of this section, the personnel officer will enter a statement to that effect in Part III of the DD Form 1607[1] giving details of any discrepancies. The form will then be returned to the applicant, who will be advised that he may forward his application, with a return envelope addressed to himself, to the appropriate field office for further review.

(iii) At the time of action under paragraph (f)(3) (i) or (ii) of this section the applicant will be informed that all future inquiries regarding his application must be directed to the field office.

(4) Each installation or establishment which is designated to perform the actions required under this paragraph (f) will maintain a chronological record of each inquiry regarding the program with appropriate notation as to disposition for submission of periodic reports as required to the nearest field office.

§ 239.5 List of homeowners assistance field offices.

Installation ordered to be closed in whole or in part located in	Send application to	Map reference
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	U.S. Army Engineer Division, 424 Trapelo Rd., Waltham, Mass. 02154	1
New York, New Jersey	U.S. Army Engineer District, 111 East 16th St., New York, N.Y. 10003	2
Maryland, Delaware, District of Columbia, Pennsylvania, east of and excluding McKean, Elk, Clearfield, Blair, and Bedford Counties	U.S. Army Engineer District, Post Office Box 1715, Baltimore, Md. 21203	3
Virginia	U.S. Army Engineer District, Fort Norfolk, 803 Front St., Norfolk, Va. 23510	4
Georgia, North Carolina, South Carolina	U.S. Army Engineer District, Post Office Box 889, Savannah, Ga. 31402	5
Florida, east of and excluding Leon and Wakulla Counties	U.S. Army Engineer District, Post Office Box 4970, Jacksonville, Fla. 32201	6
Florida, west of and including Leon and Wakulla Counties, Alabama, Mississippi, Tennessee	U.S. Army Engineer District, Post Office Box 2288, Mobile, Ala. 36601	7
Kentucky, Ohio, Indiana, Clark, Floyd, and Jefferson Counties only, West Virginia, Pennsylvania, west of and including McKean, Elk, Clearfield, Blair, and Bedford Counties	U.S. Army Engineer District, Post Office Box 59, Louisville, Ky. 40201	8
Illinois, Indiana except Clark, Floyd, and Jefferson Counties, Michigan, Minnesota, Wisconsin	U.S. Army Engineer District, 219 South Dearborn St., Chicago, Ill. 60604	
Colorado, Iowa, Nebraska, North Dakota, South Dakota, Wyoming	U.S. Army Engineer District, 6012 USPO and Courthouse, 215 North 17th St., Omaha, Nebr. 68102	10

---

[1] Filed as part of original document.

Installation ordered to be closed in whole or in part located in	Send application to	Map reference
Kansas, Missouri	U.S. Army Engineer District, 700 Federal Office Bldg., 601 East 12th St., Kansas City, Mo. 64106	11
Arkansas, Louisiana, Oklahoma, Texas, east of and including Hardeman, Foard, Knox, Haskell, Jones, Taylor, Runnels, Concho, Menard, Kimble, Val Verde, Kinney, Maverick, Witt, Zapata, Starr, Hidalgo and Cameron Counties	U.S. Army Engineer District, Post Office Box 17300, Fort Worth, Tex. 76102	12
New Mexico, Texas, west of and including Lipscomb, Hemphill, Wheeler, Collingsworth, Childress, Cottle, King, Stonewall, Fisher, Nolan, Coke, Tom Greene, Schleicher, Sutton, and Terrell Counties	U.S. Army Engineer District, Post Office Box 1580, Albuquerque, N. Mex. 87103	13
California, south of and including San Luis Obispo, Kern, and Inyo Counties, Arizona, Nevada, Clark, and Lincoln Counties only	U.S. Army Engineer District, Post Office Box 2711, Los Angeles, Calif. 90053	14
California, north of and including Monterey, Kings, Tulare, and Mono Counties, Nevada, except Clark and Lincoln Counties, Utah	U.S. Army Engineer District, 650 Capitol Mall, Sacramento, Calif. 95814	15
Idaho, Montana, Oregon, Washington	U.S. Army Engineer District, 1519 Alaskan Way, South, Seattle, Wash. 98134	16
Alaska	U.S. Army Engineer District, Post Office Box 7002, Anchorage, Alaska 99501	None
Hawaii	U.S. Army Engineer District, Fort Armstrong, Honolulu, Hawaii 96813	None

Filed as part of original document.

APPENDIX A—AGREEMENT, HOMEOWNERS ASSISTANCE PROGRAM AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ARTICLE I—INTRODUCTION

SECTION 1. Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (Pub. L. 89-754, enacted Nov. 3, 1966) authorizes the Secretary of Defense to provide assistance to owners of one- or two-family dwellings located at or near military installations, ordered to be closed in whole or in part subsequent to November 1, 1964, when certain determinations have been made with respect to eligibility. In certain instances this assistance may be rendered by acquiring title to the properties of such owners under terms and conditions prescribed by the statute.

SEC. 2. Section 1013(d) of the Act provides a fund for the purpose of this program, which has been established as the Homeowners Assistance Fund, Defense. Section 1013(g) authorizes the Secretary of Defense to enter into agreement with the Secretary of Housing and Urban Development with respect to administration of the program. This agreement is executed on behalf of the Secretary of Defense by the Assistant Secretary of Defense (Installations and Logistics) pursuant to delegation of authority contained in DoD Directive 5100.54, dated December 29, 1967 (33 FR 2570) and by the Secretary of Housing and Urban Development.

SEC. 3. For the purposes of this agreement, the following definitions shall apply:

(a) "Act" means section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, enacted November 3, 1966.

(b) "Secretary of Defense" means the Secretary of Defense or an officer or employee of the Department of Defense empowered to exercise any of the functions of the Secretary of Defense under the Act.

(c) "DoD" means the Department of Defense.

(d) "Secretary, HUD" or "HUD" means the Secretary of Housing and Urban Development or an officer or employee of the Department of Housing and Urban Development empowered to exercise any of the functions of the Secretary of Housing and Urban Development under the Act.

(e) "Corps" means the Office of the Chief of Engineers, Department of the Army.

(f) "Division/District Engineer" means either the Division Engineer of the Corps or the District Engineer of the Corps, as applicable under the circumstances, having military jurisdiction in the area in which the property is located.

(g) "FHA" means the Federal Housing Administration.

(h) "Assistant Commissioner-Comptroller" means the Assistant Commissioner-Comptroller of the Federal Housing Administration.

(i) "FHA Insuring Office" means the local insuring office of FHA having jurisdiction over the area where the property is located.

(j) "Fund" means the Homeowners Assistance Fund, Defense, established pursuant to the authority contained in section 1013(d) of the Act.

(k) "Acquired property" means property acquired pursuant to the Act.

ARTICLE II—POLICY AND OBJECTIVE

SECTION 1. As more fully set forth below, Secretary, HUD will accept custody, subject to funds made available by DoD, of property acquired pursuant to the Act and maintain, manage, and dispose of such properties on behalf of the Secretary of Defense. In the event the Fund no longer has any monies available, the Secretary, HUD may terminate this Agreement and DoD shall in that event assume custody and responsibility for all properties accepted, and mortgage payment liabilities assumed, by HUD pursuant to this agreement. It is the agreed objective that acquired properties will be held, managed and disposed of in such a way as to:

(a) Avoid further depression of local real estate market conditions in areas where the housing market is depressed, and

(b) Consistent with item (a) above and with the desirability of disposing of the properties as rapidly as feasible, seek to obtain the best possible financial return to the Fund. During the period properties are held by FHA, and when it is feasible and in the best interest of the Government, consistent with HUD/FHA policy as to Secretary, HUD-owned property in the areas acquired in the course of FHA mortgage insurance operations, properties will be rented to third parties at rates generally obtainable for comparable properties in the area.

SEC. 2. The Secretary of Defense and the Secretary, HUD will expedite action in all offices and at all levels of their organizations relative to matters that are the subject of this agreement, and each will use all available means to assure that the purposes of the Act are accomplished in accordance with the spirit and intent of the Act.

ARTICLE III—ACQUISITION AND ASSUMPTION OF CUSTODY

SECTION 1. As to properties acquired by the Corps under this Act, acquisition will be accomplished by the Division/District Engineer, who will negotiate with the owner as to terms, will effect the closing, and will pay to the property owner such sums as may be due to him. The Division/District Engineer will obtain a merchantable title to the property which meets the title requirements of the Attorney General of the United States.

SEC. 2. HUD/FHA, on behalf of the Fund, will assume custody of properties acquired as of the date that title in the property vests in the United States, for the purpose of holding, managing, renovating, renting, and disposing of said properties. The District/Division Engineer will file the deed for record promptly upon title vesting in the United States, and on the same date will notify the FHA insuring office of the acquisition, using FHA Form 1174,[1] Notice of Military Acquisition, copy attached hereto and made a part hereof, and will on the same date forward the keys to the property and any other data concerning the property which is requested by FHA to the FHA insuring office. The original and two copies of FHA Form 1174, completely executed, will be forwarded to the FHA insuring office for each property acquired. The FHA insuring office will assign an FHA identification number to the property, insert this identification number on one copy of Form 1174 and promptly return this copy to the Division/District Engineer.

SEC. 3. Properties acquired pursuant to the Act shall be conveyed to, and acquired in the name of, the United States. Title to the properties shall be of sufficient quality and standard as to be readily merchantable in the locality. Encumbrances that do not affect the merchantability of the properties, such as easements for roads and utilities will not be required to be cleared from the title. In the event HUD/FHA determines that there is any encumbrance to title which, under local custom and legal procedures of the situs of the property, would preclude or diminish HUD/FHA's ability to dispose of the property, it is agreed that HUD/FHA may remove the encumbrance and that the costs of such removal will be borne by the Fund. In those instances where a defect in title is discovered, the Fund will be responsible for the cost of curing said defect.

SEC. 4. As a prerequisite to acquisition of the property, the Division/District Engineer will procure adequate title evidence covering the property and will have the title evidence continued through the date and time of recording the deed to the United States. When the opinion of the Attorney General approving the title has been received, the Division/District Engineer will transmit same by FHA Form 1175,[1] Transmittal of Recorded Deed and Title Assembly, copy attached hereto and made a part hereof, together with the recorded deed and other muniments of title, to the FHA Assistant Commissioner-Comptroller at his offices in Washington, D.C.

SEC. 5. Where title to a property is acquired subject to the existing mortgage, the Government will assume and agree to pay said mortgage in accordance with the terms of the mortgage. The mortgage will not be prepaid unless HUD/FHA determines that prepayment is mandatory to enable HUD/FHA to effectively manage and dispose of the property.

---

[1] Filed as part of original document.

SEC. 6. Any mortgage, other than a first mortgage, which is assumed by the Government pursuant to the Act, will be paid off as a part of the closing of the purchase transaction. All mortgage arrears existing with respect to the first mortgage will be brought current at the time of the property acquisition. If HUD/FHA ascertains that mortgage arrears have not been brought current, HUD/FHA is authorized to make the necessary payment to restore the mortgage account to a current condition and the Fund will bear the costs of same.

SEC. 7. Possession of acquired properties will normally be obtained at the time title is vested in the United States and at the time FHA Form 1174 is forwarded to HUD/FHA. Properties will be delivered vacant to FHA, except in the following circumstances:

(a) HUD/FHA will accept custody of a property occupied under a lease which cannot be terminated and has an unexpired portion of less than 1 year provided all payments due under the lease are current, and provided, further, that the lessee will waive any right to exclusive extension of the lessee, other than month-to-month occupancy.

(b) Owners or tenants, on a month-to-month basis, of acquired properties may be permitted a 30-day period following acquisition of title in the name of the United States to vacate the property.

(c) Upon agreement with the Director of the FHA insuring office, HUD/FHA will accept custody of properties occupied under leases in excess of a year's duration.

SEC. 8. In cases where properties are acquired subject to existing leases, the leases must be assigned and transferred to the United States. Such leases will be delivered to the FHA insuring office with FHA Form 1174. All costs of eviction incurred by HUD/FHA will be reimbursed by the Fund. Except in cases involving a lease in which the unexpired portion is less than 1 year, no agreement shall be entered into with owners or occupants of properties to be acquired concerning their continued occupancy in the property without prior written approval of the Director of the FHA insuring office and the tenure of any occupancy will be entirely at the option of the FHA insuring office.

SEC. 9. The Government will normally be a self-insurer of acquired properties and hazard insurance will be cancelled by HUD/FHA as soon as possible after passing of title. Any unearned premium will be the property of the former owner who will be responsible for claiming same from the insurer. The Department of Defense understands that the decision as to whether or not hazard insurance must be carried is that of the mortgagee and HUD/FHA must abide by the requirements of the mortgagee. In the event the mortgagee, pursuant to the terms of the mortgage, requires that hazard insurance be carried, HUD/FHA will obtain a hazard insurance policy on the property in an amount sufficient to comply with the mortgage. In the event hazard insurance is obtained, HUD/FHA will pay for such insurance and will be reimbursed from the Fund.

ARTICLE IV—MAINTENANCE, MANAGEMENT AND DISPOSAL

SECTION 1. To the extent not inconsistent with the provisions of this Agreement, HUD/FHA will maintain, manage, renovate, rent, sell, and dispose of the acquired properties in the same manner and under the same procedures as are used by HUD/FHA for properties acquired pursuant to FHA insurance contracts. HUD/FHA will give neither advantage nor disadvantage insofar as sale or other activity is concerned to properties acquired pursuant to this Agreement. HUD/FHA will treat such properties in the same manner as properties acquired pursuant to FHA insurance contracts. HUD/FHA is hereby authorized to repair, renovate, restore, or take any protective maintenance deemed necessary by HUD/FHA insofar as any property covered by this Agreement is concerned. The terms of rental, sale for cash or credit or by assumption of the existing mortgage, or by other means of disposal of any property covered by this Agreement which is contracted for or otherwise entered into by FHA shall be final.

SEC. 2. While any acquired property is under HUD/FHA's custody, payments in lieu of taxes will be made by the FHA Assistant Commissioner-Comptroller to local taxing authorities in amounts equivalent to the taxes which would be payable were the properties in private hands, except when the Government is making expenditures for streets, utilities or other public services. In such cases, the Division/District Engineer will advise the FHA Assistant Commissioner-Comptroller of such expenditures and specify what allowances are to be deducted. It shall be the responsibility of the Division/District Engineer to advise the FHA Assistant Commissioner-Comptroller in such cases sufficiently prior to the time that the Assistant Commissioner-Comptroller makes payment of any tax bill received by FHA on acquired properties. In the event that such notice is not received from the Division/District Engineer by such time, the Assistant Commissioner-Comptroller may pay the amount of the net tax bill without penalties.

SEC. 3. This agreement contemplates that disposal of the properties will be accomplished by the financing arrangements available to HUD/FHA and beneficial to DoD. The following financial arrangements will generally be used and FHA will be guided by the same considerations that govern FHA sales of its properties:

1. Sale of the property for cash or through the use of a conventional uninsured mortgage.
2. Sale of the property providing for assumption of the existing mortgage indebtedness by the buyer or sale of the property subject to the existing mortgage indebtedness.
3. Sale of the property by use of FHA's insured private financing program or FHA's instant FNMA closing program if available.
4. Sale of the property by use of a purchase money mortgage taken by the Secretary, Department of Housing and Urban Development. In those cases where an existing mortgage is assumed and the assumptor subsequently defaults, the Fund will be responsible for all costs, expenses or losses sustained by HUD/FHA in satisfying the Government's liability on the mortgage. In the event it is advantageous to the Government to sell by assumption and the sales price is less than the outstanding mortgage balance, the Fund shall be responsible for the money which is required to reduce the outstanding principal balance of the mortgage. When, in order to facilitate the sale of acquired properties, FHA insures the mortgage, the Fund will be responsible for all expenses incurred by FHA on the first sale, including losses in connection therewith, as computed by the FHA Assistant Commissioner-Comptroller.

ARTICLE V—FINANCING, ACCOUNTING, AND REPORTING

SECTION 1. The Corps will furnish to HUD/FHA by June 1 of each year an estimate of the number of housing units expected to be acquired and transferred to HUD/FHA during the succeeding fiscal year and those during the following budget year. The estimates will show the number of housing units, FHA insuring office jurisdiction, estimated average monthly principal and interest payments and expected quarterly phasing of transfer to FHA.

On August 1 of each year HUD/FHA will submit a budget estimate to the Corps setting forth the estimated financial requirements for the activities that FHA is to perform for the Secretary of Defense pursuant to the terms of this agreement covering the then current fiscal year and the following budget year. The estimate, in terms of obligations/expenditures, should be by FHA insuring office jurisdiction and in the same cost categories as maintained in the automatic tape record as set forth in Article V, section 2, for each acquired property and as included in the monthly reimbursement request set forth in Article V, section 3, for all other expenses. On May 1 of each year FHA will furnish to the Corps in the same format as the August 1 statement an updated estimate of obligations/expenditures then estimated to be incurred in the succeeding fiscal year.

Based on the estimated financial requirements, in consonance with budgetary and appropriation actions, the Corps will issue to FHA on July 1 of each year a reimbursable order including an obligation/expenditure limitation as to the amount which the FHA may, on a net basis, obligate/expend in anticipation of reimbursement from the Fund for that fiscal year. FHA will promptly advise the Corps whenever it determines that the performance of its responsibility under this Agreement requires any adjustment, together with an estimate and explanation of the changes needed so as to permit the continued effective operation of the program as contemplated under this agreement. The Corps of Engineers will arrange to provide for the necessary adjustment within its authority. Where this is unfeasible the Corps of Engineers will submit the requirement promptly to the Secretary of Defense. The Secretary of Defense will either provide the additional resources required or will directly advise FHA as to the course of action necessary to be taken pending the availability of additional resources.

SEC. 2. The FHA will maintain in its automated tape records an account for each acquired property. The account will separately identify each of the following:

(a) The FHA identification number, which will be assigned by the FHA insuring office. The Corps will be advised of the FHA identification number on the copy of the FHA Form 1174 returned to the Corps per Article III, section 2.

(b) Property address, entered by the Corps on the FHA Form 1174 within the space allotted in ADP records.

(c) Outstanding mortgage balance at acquisition.

(d) Property acquired. Contra to (c) above, this will be established in the same amount and will offset the outstanding mortgage balance. In the event a property is sold with the purchaser assuming the mortgage or with FHA taking a purchase money mortgage the outstanding balance assumed by the purchaser or the amount of the purchase money mortgage accepted will be recorded as a reduction of the amount originally established.

(e) Principal payments including prepayments of the entire balance when necessary by FHA on the mortgage.

(f) Interest payments by FHA on the mortgage.

BEST COPY AVAILABLE

(g) Payments in lieu of taxes and insurance payments by FHA. The Corps will notify FHA on the FHA Form 1174 of Escrow Accounts retained by the mortgagee.

(h) Maintenance and operating expenses paid by FHA including any special payments for evictions and removal of title impediments. Direct expense transactions of $100 or more will be a direct charge to the affected property account. All other expenses, generally derived from net settlements with brokers, made pursuant to FHA 2570 Accounting Manual for Acquired Properties, as may be amended from time to time, will be prorated monthly to all home properties in FHA's inventory, including those acquired pursuant to this agreement. Net settlement means expenses paid by brokers less rental collections.

(i) Sales expenses paid by FHA which will be for sales, closing costs, and discount on notes.

(j) Net FHA incurred expense, which will be the net total of amounts recorded in items (e) through (j) of this section.

(k) Gross Sales Price agreed to by FHA. This is not the same as cash proceeds which will be reported separately by FHA.

(l) Net Expense or Collection on Sold Properties, which will be the gross sales price less adjustments to item (d) of this section less item (j) of this section.

(m) A Corps' furnished base identification and homeowner classification code consisting of 7 digits (2 digits for State code and 4 digits for installation number plus the number "2" for civilian or the number "1" for military homeowner).

SEC. 3. FHA will furnish to the Corps the following reports:

(a) Monthly, no later than 30 working days after the end of each calendar month the FHA Form 1131, "Acquired Home Property, Maintenance Phase Trial Balance," showing separate totals to date for items (c) through (l) of Article V, section 2, for each FHA identification number.

(b) Monthly, no later than 30 working days after the end of each calendar month a statement supporting an SF 1080 billing setting forth the following:

(1) Net change in FHA expenses for acquired properties as reported on the current and prior month, Article V, section 3, item (a) reports, separately for "on hand" and for "sold" properties.

(2) Sales proceeds, which will be detailed by the gross sales price agreed to by FHA less amount of mortgages assumed by buyers less purchase money mortgages accepted by FHA.

(3) Principal and interest collections separately on purchase money mortgages.

(4) FHA insuring office expenses directly related to this agreement, developed on basis of reports received in accordance with FHA Manual, Field Expense and Performance Handbook, as may be amended from time to time. This item will be supported by a schedule showing total expenses incurred by each FHA insuring office.

(5) FHA Headquarters expenses directly related to this agreement developed on basis of reports received in accordance with FHA Manual, Departmental Expenses and Performance Handbook, as may be amended from time to time.

(6) HUD departmental level expenses directly related to this program which will include Automatic Data Processing (ADP) services, printing and some other minor expenses, which in the judgment of FHA are appropriately chargeable under this Agreement. ADP services will include the cost of magnetic tapes furnished the Corps under Article V, section 3, item (c) and Article V, section 4, and personal service costs.

Personal service costs included in items (4), (5), and (6) will be limited to those directly related to this program on the basis of time worked and will consist of salary cost plus FICA and the Government contribution for health benefits, life insurance, and retirement funds. An additional 15.9 percent of this total will be added to cover the cost of earned annual leave, sick leave taken, and holiday leave.

(7) Amount due FHA from the Fund or amount due the Fund from FHA.

(c) Quarterly, not later than 30 working days after the end of each calendar quarter a duplicate of the FHA automated tape record for all acquired properties.

SEC. 4. Whenever FHA determines that they do not plan to offer properties for sale within 12 months after acquisition, the FHA will so advise the Secretary of Defense, with the expected prospects for such disposition. The Secretary of Defense will consult with the FHA on alternative means of disposal in such cases where such alternatives are considered feasible.

SEC. 5. FHA will not drop closed cases for properties acquired pursuant to the Act from the automated tape records except by special agreement with the Corps, at which time a duplicate of FHA's automated tape record of such cases will be furnished to the Corps.

SEC. 6. It is agreed and understood that, in performing the accounting and reporting operations set out herein, FHA will accomplish the objectives using its existing automated data processing routines and programs, and that no special programming or detailed printouts will be required from FHA.

SEC. 7. The Corps, within 6 working days after receipt of a monthly statement indicating an amount due FHA, will reimburse FHA by check for the amount shown on the statement. The check will be made payable to the Federal Housing Administration and will be forwarded to the FHA Assistant Commissioner-Comptroller.

SEC. 8. In those instances where the statement indicates an amount due the Fund, a check payable to the Homeowners Assistance Fund, Defense, for such amount will accompany the monthly statement submitted to the Corps by FHA.

SEC. 9. The following FHA issuances and changes thereto will be furnished to the Corps:

(a) FHA 2750, Accounting Manual for Acquired Properties;

(b) FHA Manual, Field Expense and Performance Handbook;

(c) FHA Manual, Departmental Expense and Performance Handbook.

SEC. 10. FHA will maintain a separate document file for each acquired property. The file will contain at least the FHA Form 1174 and FHA Form 1175 and attachments thereto.

ARTICLE VI—FINALITY OF ACTION

SECTION 1. This agreement embodies the full understanding of the Department of Defense and the Department of Housing and Urban Development concerning their responsibilities and it is understood that all decisions made and all actions taken by HUD/FHA within the terms of this agreement with respect to all aspects of clearing impediments of title, prepayment of mortgages, eviction of occupants, prepayment of hazard insurance coverage premiums, and all other matters relating to the maintenance, management, renovation, rental, sale, or other disposal of properties and the selection and use of brokers shall be final and conclusive as fully as if made or taken by the Secretary of Defense.

ARTICLE VII—DELEGATION OF AUTHORITY

SECTION 1. The Secretary of Housing and Urban Development is hereby authorized, with respect to acquired properties, to acquire title to, hold, manage, sell for cash or credit by taking a purchase money mortgage in the name of the Secretary of Housing and Urban Development, and, in connection therewith, to execute deeds of conveyance and all other instruments necessary to fulfill the purposes of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (Pub. L. 89-754, enacted Nov. 3, 1966), to issue rules and regulations and to make any or all determinations and to take any or all further actions in connection with acquired properties which the Secretary of Defense is authorized to undertake pursuant to the provisions of the Act. The Secretary of Housing and Urban Development is further authorized to redelegate any of the functions, powers and duties delegated herein to officers and employees of HUD and to authorize successive redelegations.

[34 FR 18031, Nov. 7, 1969]

PART 239a—DEPARTMENT OF DEFENSE HOUSING REFERRAL PROGRAM

Sec.
239a.1 Purpose and objectives.
239a.2 Applicability and scope.
239a.3 Policies and responsibilities.
239a.4 Programing, budgeting and financing.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 35 FR 12201, July 30, 1970, unless otherwise noted.

§ 239a.1 Purpose and objectives.

This part sets forth Department of Defense policy governing the establishment and operation of Housing Referral Offices to assure that military personnel authorized to reside off-base are quickly, adequately, suitably and economically housed in quarters within reasonable proximity of their duty stations.

§ 239a.2 Applicability and scope.

The provisions of this part apply to the Military Departments, Defense Agencies, and other DoD activities (hereinafter referred to collectively as "DoD Components") which have military personnel assigned who are authorized to live in the civilian community.

§ 239a.3 Policies and responsibilities.

(a) Heads of the DoD Components will provide for the establishment and operation of Housing Referral Offices at each installation in the United States under their jurisdiction having more than 500 military personnel assigned.

(1) Each Housing Referral Office will offer complete referral services and a full range of personal assistance to all military personnel assistance to (and/or dependents) who require and are authorized to occupy off-base housing. This assistance will be available to all military personnel and dependents, regardless of their pay grade, years of service, or marital status.

(2) The housing of DoD military personnel will be conducted on a nondiscriminatory basis. All housing activity will be free from racial discrimination, and provide equal opportunity and treatment for all military personnel irrespective of their race, color, creed, or national origin.

(3) The Housing Referral Offices will be established as components of installation level Family Housing Offices. Any exceptions to this policy will be specifically approved by the Assistant Secretary of Defense (Installations and Logistics).

(b) At smaller installations (500 or less military personnel assigned) housing referral services will be performed to the extent required, however, full advantage will be taken of housing referral services offered by larger installations in the area. Where a military family housing inventory exists, these referral services will be performed by the family housing office.

(c) Housing Referral Offices and services may be established in overseas areas at the discretion of the head of each DoD Component concerned, after approval by the Assistant Secretary of Defense (Installations and Logistics). Where such service is provided, there will be full coordination between and among affected DoD Components.

(d) The Assistant Secretary of Defense (Installations and Logistics) will develop and issue supplementary DoD Instructions governing the operation of the Housing Referral Program, and review and evaluate compliance therewith.

(e) The Assistant Secretary of Defense (Manpower and Reserve Affairs) will review and evaluate compliance relating to Equal Opportunity in off-base housing including required surveys to measure progress in the area of off-base discrimination.

(f) The Assistant Secretary of Defense (Comptroller) is responsible for issuing policy and procedures for the financing of the Housing Referral Program.

(g) The Secretaries of the Military Departments and Directors of Defense Agencies are responsible for the establishment and operation of the Housing Referral Offices and the performance of housing referral and related services.

§ 239a.4 Programing, budgeting and financing.

(a) Resources required for the Housing Referral Program will be programed, budgeted and financed under the Family Housing Management Account or the applicable Military Personnel Appropriation.

(b) Costs of housing referral services (exclusive of costs related to military personnel) are chargeable to the Family Housing Management Account under the Major Functional Category: Operation and Maintenance; Immediate Subordinate Account: Operations; Subaccount: Administration. Applicable costs charged to this account will be determined in accordance with the principles set forth in DoD Instruction 7150.6[1] for charging administrative and related support costs. Appropriate DoD issuances will be revised accordingly.

(c) Costs of military personnel engaged in this program will be charged to the applicable Military Personnel Appropriation.

PART 239b—HOUSING REFERRAL OFFICES AND SERVICES

Sec.

239b.1 Purpose.
239b.2 Applicability and scope.
239b.3 Program objectives.
239b.4 General guidelines.
239b.5 Functions and responsibilities.
239b.6 Criteria for establishing joint or coordinated offices.
239b.7 Housing referral offices procedures and reports.

AUTHORITY: 5 U.S.C. 301 and Part 239a of this subchapter.

SOURCE: 35 FR 12201, July 30, 1970, unless otherwise noted.

§ 239b.1 Purpose.

This part supplements Part 239a of this subchapter and provides guidance for (a) establishment and operation of

---

[1] Filed as part of original. Copies available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

BEST COPY AVAILABLE

Housing Referral Offices, (b) performance of housing referral services, and (c) reporting requirements.

§ 239b.2 Applicability and scope.

The provisions of this part apply to all DoD Components (the Military Departments, Defense Agencies and other DoD activities) which have military personnel assigned who are authorized to live in the civilian community.

§ 239b.3 Program objectives.

(a) The Housing referral program is to provide military personnel authorized to live in the civilian community with a personalized and conveniently available service to assist them in locating suitable off-base housing. Communities near military installations are relied on as a primary source of housing for military personnel.

(b) Where government quarters are available, assignments are made in accordance with existing instructions (see DoD Instruction 4165.44[1]).

(c) In providing full and complete Housing Referral Services to all military personnel, it is the intent to avoid duplication and overlapping where two or more installations are located in the same general area and draw upon the same community support.

§ 239b.4 General guidelines.

(a) In appropriate geographic areas, maximum intra- and inter-service coordination will be effected in performing housing referral services. A single (joint) referral office should be considered where suitable and where more than one installation draws upon the same community support.

(b) The housing referral services will be established and operated within the centralized Family Housing Offices as prescribed by Part 239a of this subchapter unless specifically exempted by the ASD(I&L). Operations will be performed by permanently assigned personnel to the degree possible. Family or community services volunteers may be utilized, but only to assist personnel responsible for providing such services. Military personnel or civilian personnel may be used as required.

(c) In order to provide maximum assistance, procedures will be established whereby military personnel are processed through the appropriate housing referral office prior to the execution of a commitment for obtaining private housing. In this manner, personnel can be provided centralized information on availability of public quarters, types and costs of available private rental housing, schools, shopping, and other community services. Each military person shall retain his freedom of choice in the selection of private accommodations, except in those situations where competent authority has imposed restrictive sanctions against certain rental properties or when there is a requirement to occupy Military Family Housing; in this connection, efforts should be made to avoid hardship on the serviceman. DoD Instruction 4165.44[1] establishes criteria for considering hardship cases.

(d) In all instances, positive, aggressive action will be taken to secure the maximum number of suitable listings (vacancies) of properties which are available for occupancy by military personnel.

(e) Establishment of housing referral service is not intended to intrude on the normal relations between real estate brokers, rental agents, sales agents, and their customers.

§ 239b.5 Functions and responsibilities.

(a) *Large installations (more than 500 military personnel assigned).* Under the general supervision of heads of DoD Components each Housing Referral Office will perform the following:

(1) Obtain nondiscriminatory listings (vacancies) of housing units in the commuting area. Inspect property submitted for listing when there is a question of suitability based on environmental conditions, including health and safety considerations.

(2) Maintain listings, as applicable, of housing against which sanctions have been imposed.

(3) Provide housing information to military personnel and dependents of all components of DoD.

---

[1] See footnote 1 to § 239a.4.

(4) Counsel all military personnel processed through the referral service concerning standards of conduct and on availability of assistance in resolving complaints between tenant and landlord.

(5) Secure reports from personnel of housing obtained from any source or reasons for failure to obtain suitable housing.

(6) Maintain continuous liaison with the real estate interests and the community to advise of military housing needs, to obtain listings of available units and to encourage open housing for military personnel.

(7) Maintain liaison with other Government agencies regarding availability of housing assets to satisfy DoD housing needs.

(8) Stay abreast of housing activity in the community and community services and provide this information to interested personnel.

(9) Assist, as required, in assuring that only nondiscriminatory advertisements of rental or sale housing units appear in media under control of the command (see DoD Instruction 1436.1[1] and 5120.4[1]).

(10) Exchange housing listings and data with other Housing Referral Offices as appropriate.

(11) Maintain signed acknowledgements of notification to military members of any units restricted by official sanction.

(12) Maintain data and submit reports, as required, regarding progress on obtaining listings and referrals and placements made, and related matters.

(13) Verify availability of houses for sale or rent prior to referring personnel to them. Contact apartment owners or operators as necessary to assure knowledge of current rental policies, practices, and rates.

(14) Provide a point of contact for real estate interests and military personnel in regard to complaints associated with housing and provide a mediation service. In the event of complaints pertaining to racial discrimination the provisions of DoD Instruction 1338.12[1]169 will be followed.

(15) Withhold authorization of leases or rental agreements by military personnel in discriminatory facilities.

(b) *Small installations (500 or less military personnel assigned).* Under the general supervision of heads of DoD Components each installation commander will:

(1) Assure that full advantage is taken of housing referral services offered by larger installations in the area.

(2) Make available referral services and, in addition, personal assistance described in paragraph (a) of this section to the extent required by the local environment.

(3) Withhold authorization of leases or rental agreements by military personnel in discriminatory facilities.

§ 239b.6 Criteria for establishing joint or coordinated offices.

(a) *Joint office.* A single (joint) housing referral office serving all installations in the area may be established if all installations are so situated that the single referral office will not cause personal inconvenience or lessen the effectiveness of referral service for military personnel in the area. When a single housing referral office is established, one installation will be responsible for all functions and responsibilities listed in § 239b.5. This includes single reporting for the area, and followup action on complaints reported by military personnel of all Services and property owners, as deemed appropriate. A single referral office may be jointly manned, as agreed locally.

(b) *Coordinated offices.* In areas where it is determined that a single (joint) referral office is not appropriate, one installation may be designated as central coordinator for the area. The central coordinator will serve as a single point or as DoD prime agency for contacts between the military and community officials and local, state and federal agencies. In coordinated areas, each installation will be responsible for providing referral service. Two methods of operating coordinated offices are:

(1) *Divide the area among officers.* The geographical area may be divided among several installations based on their area of interest. Each installa-

---

[1] See footnote 1 to § 239a.4.

BEST COPY AVAILABLE

tion commander will be charged with all the functions and responsibilities of the referral service that pertain to his area, except the overall community coordination responsibilities of the central coordinator. Under this arrangement, each installation commander will be responsible for contacting individual landlords to obtain referral listings within the specifically assigned geographical area of responsibility. As appropriate, referral offices will exchange information on listings and each will counsel and refer its own applicants.

(2) *Coordinating office make contacts and obtain listings.* The central coordinator may operate as a joint activity responsible for housing referral functions for all installations in the area short of counseling and providing assistance to members reporting to individual installation referral offices. Referral offices at each installation may operate as branch offices of the central coordinator or as separate referral offices. In either case each office will receive consolidated referral information from the central coordinator and will counsel and refer its own applicants.

§ 239b.7 Housing referral offices—procedures and reports.

(a) *Housing listings (vacancies).* No effort should be spared in obtaining the maximum number of housing listings (vacancies) required for use as referrals for those personnel authorized to live off base. Listings must be documented, however, with written assurance of availability (see paragraph (b) of this section) to all military personnel without regard to race, creed, color or national origin.

(1) *Rental listings.* (i) Listings of housing units available for rent to military personnel shall be obtained from owners, their representatives or from real estate agents.

(ii) The owner or manager or agent of the property being listed shall be requested to sign a "Family Housing Information Sheet" (DD Form 1666)[2] or provide other assurances that the property is available to all military personnel. The documented assurance shall be retained in files for needed purposes.

(iii) A more detailed rental listing card (DD Form 1667)[2] shall be completed for each facility and cross referenced to the signed "Family Housing Information Sheet" or such other assurance of availability to all military personnel that is provided.

(iv) The data on the listing cards[2] should be checked for accuracy and currency.

(v) The property owner, manager, or agent who makes the listing should be requested to advise the Housing Referral Office when the unit is rented or when it is no longer available for rent. This notification may be accomplished by telephone or any other means of communication.

(vi) The "Detailed Sales/Rental Listing Card" (DD Form 1667)[2] shall be filed in the appropriate "for rent" file and used as appropriate in making referrals.

(2) *Other facility listings.* Accommodations such as shares, sublets, transient quarters, rooms and trailer courts are to be handled the same as rentals.

(3) *Sales listings.* (i) Listings of housing units available for sale to military personnel shall be obtained from owners, their representatives or from real estate agents.

(ii) The owner or manager or agent of the property being listed shall be requested to sign a "Family Housing Information Sheet" (DD Form 1666)[2] or provide other assurances that the property is available to all military personnel. The documented assurance shall be retained in files for record purposes.

(iii) The "Detailed Sales/Rental Listing Card" (DD Form 1667)[2] should be completed for each facility and cross referenced to the signed "Family Housing Information Sheet" (DD Form 1666)[2] or other documented assurance of availability to all military personnel.

(iv) The detail on the listing cards should be checked for accuracy and currency.

---

[2] Filed as part of original.

(v) The property owner, manager, or agent who makes the listing should be requested to advise the Housing Referral Office when the unit is sold or when it is no longer available for sale. This notification may be accomplished by telephone or any other means of communication.

(vi) The "Detailed Sales/Rental Listing Card" (DD Form 1667)[2] shall be filed in the appropriate "for sale" file and used in making referrals.

(b) *Assurance of availability to all military personnel.* (1) Property may be qualified for listing with the housing referral service by completion of the "Family Housing Information Sheet" (DD Form 1666)[2] by the owner or manager of the property, or through an exchange of letters, or by other means devised locally so long as the result is a written assurance of nondiscrimination which can be retained in the referral files. Where the "Family Housing Information Sheet" (DD Form 1666)[2] is not used, the information required by that form will be obtained and retained on file.

(2) When the Housing Referral Office or the installation commander is unable to obtain a written assurance of availability to all military personnel from an owner, manager, or agent who nevertheless asserts that he follows this policy, the facility may be listed for referral if there is on file in the Housing Referral Office:

(i) A statement signed personally by the installation commander or his deputy, as appropriate, or his specific designee, that an explicit oral assurance of availability to all military personnel has been furnished him by the owner or manager in question; and

(ii) Information required to complete the "Family Housing Information Sheet" (DD Form 1666).[2]

(c) *Processing personnel.* In accordance with established procedures, assure that all military personnel seeking offbase housing are reporting to the appropriate Housing Referral Office prior to obtaining off-base housing.

(d) *Housing referral counselling and assistance.* (1) An inquiry will be made of each individual clearing through the Housing Referral Office to determine if he desires assistance in obtaining off-base housing. If the individual does not desire assistance of the Housing Referral Office a documented statement to this effect shall be obtained. Record why he does not desire assistance and record his place of duty and telephone number. Counsel and provide him with the guidelines as set forth in paragraphs (d) (2), (8), (9), (10), and (11) of this section.

(2) If assistance is desired, the applicant should be assisted in completing an "Off-Base Housing Application" (DD Form 1668).[2] Insure that his place of duty and telephone number are recorded. If official sanctions have been imposed restricting housing facilities, the individual reporting to the Housing Referral Office must be provided with a listing of these restricted facilities and be required to sign a statement of receipt.

(3) A complete file or list of rentals of sales offerings in the size, location and price range he has indicated, will be made available to the applicant.

(4) The applicant will be furnished a form (DD Form 1669)[2] for recording the information obtained from the files. Filed as part of original.

(5) The applicant will be assisted as necessary in locating, mapping, and marking the listings he has chosen and advised that additional listings which may become available may be obtained from the office by telephone.

(6) The applicant will be provided general information on the geographic area in which he desires to locate including, as appropriate, information on public, private, and parochial schools, transportation, churches, recreational facilities, emergency service, and like information (see also paragraph (e) of this section).

(7) Each applicant should be counselled concerning the scope of the Department of Defense policy regarding off-base housing and advised that, in order to determine the effectiveness of the program and to insure that owners/managers of housing facilities listed with the referral system are honoring their availability statements, a report of his experiences in locating suitable off-base housing is essential.

---

[2] Filed as part of original.

Any form of discrimination or other complaints concerning any housing facility to which he was referred or to which he applies must be reported immediately in complete detail to the Housing Referral Office. Complaints will be investigated immediately.

(8) An individual reporting to the Housing Referral Office will be advised to provide the Housing Referral Office within 10 duty days with an interim or final report of the status of his efforts to locate housing. The report will be made on postage-paid "Notification of Housing Selection" card (DD Form 1670)[2] provided which has been preaddressed to the appropriate office. The information reported on this card will be used as follow-up to ascertain if families have found satisfactory housing, as an indicator of the off-base housing situation, for potential future listings, and to report referral accomplishments and status of unhoused families to higher headquarters, as required. The importance of obtaining this information should be stressed and each individual will be advised that, if he does not provide an interim or final report to the Housing Referral Office within 10 duty days, positive action will be taken to follow-up and determine the status of the individual's efforts to locate housing.

(9) Each person processed will be provided with written guidelines covering standards of conduct for military personnel residing off-base, DoD FS-46, "The Military Tenant."[2] Each will be tactfully counseled concerning these standards of conduct when occupying non-Government housing, and of the availability of assistance in resolving complaints between tenants and landlords. The counseling should include a discussion of tenants' rights, the desirability of inclusion of a military release clause in all rental contracts, and the availability of legal assistance in the review of proposed leases and sales contracts to protect the interests of military personnel.

(10) Applicants displaying interest in home purchase will be advised to contact the responsible officer for determination of eligibility for payment by the Military Service of mortgage insurance premiums to the Federal Housing Administration. Veterans Administration Home Loan Guarantees are also available for qualified personnel and should be explained if the applicant is interested.

(11) Inform each person processed that he is not authorized to rent or lease a housing unit to which racial discrimination is applied.

(e) *Geographical area information.* Each Referral Office will compile information concerning schools (public, private, and parochial), shopping areas, recreational facilities, transportation, and other community facilities and services in its geographical area and assemble this information as hand out material to personnel seeking off-base housing (see also paragraph (d)(7) of this section).

(f) *Complaints.* Complaints of off-base housing problems of any nature from military personnel or from owners/managers of listed housing facilities must be investigated immediately for validity. Full and complete information will be obtained from each party concerned and the circumstances evaluated impartially. When possible, complaints should be in writing by the aggrieved party. Preliminary investigation of complaints will be made by the Housing Referral Office and adjudicated when possible. When complaints are of a serious nature and when there are indications that the command should become involved, the facts should be reported to the installation commander for further investigation and/or necessary action.

(g) *Inspections.* Inspection of rental property is for the protection of the military family moving into the community. Property should be inspected when there is a reason to question the suitability of the housing based on environmental conditions, including health and safety considerations. When, in the opinion of the command, housing is unsuitable for occupancy of military families, it may be removed as a listing or not accepted for listing.

(h) *Community liaison.* Close community contact and liaison are required. Maintain continuous liaison with local community offices, officials, and organizations who have an interest in community housing in their geographical area. Every effort will be made to publicize the need for military family housing in the community on the basis of availability to all military personnel. Contacts should include, but not be limited to, real estate boards, fair housing boards, and representatives of the Federal Housing Administration and Veterans Administration.

---

[2] Filed as part of original.

(i) *Approval of advertising.* Consistent with established command procedures Housing Referral Offices will assist, as required, to insure positive control of the advertising of rental or sale property in or on official media under the control of the command (see DoD Instructions 1436.1[2] and 5120.4[2]). This control is necessary to insure compliance with the Department of Defense program to assure equal opportunity for all military personnel in off-base housing.

(j) *Hours of operation.* Hours of operation of the Housing Referral Office should be established to meet the needs of and provide convenience for military families who desire assistance in obtaining suitable off-base housing. The hours of operation should be widely publicized in order that personnel will know when the service is available. During hours when the office is not open, arrangements should be made with an office, e.g., duty officer, charge of quarters, etc., to furnish sufficient housing referral information and a listing or restricted housing facilities to which official sanctions have been applied which will be adequate for the use of military personnel until the Housing Referral Office reopens. The location of the office which is to be utilized when the Housing Referral Office is closed should be widely publicized and clearly posted outside the Housing Referral Office. Personnel should be instructed to report to the Housing Referral Office during the next working day for further counseling and assistance.

(k) *Standards of conduct.* (1) Reference is made to Standards of Conduct for Armed Forces Personnel (Part 40 of Subchapter B of this Title 32). All military and civilian personnel assigned, attached to or employed in the Housing Referral Service are cautioned to have no business association or financial interests which might give rise to any suspicion of partiality.

(2) All military and civilian personnel connected with housing referral office activities are cautioned to avoid any action, whether or not specifically prohibited, which might result in or create the appearance of:

(i) Using public office for private gain.

(ii) Giving preferential treatment to any person or housing facility.

(iii) Making a Government decision outside official channels.

(iv) Affecting adversely the confidence of the public in the integrity of the government.

(l) *Publications.* Publications that are inconsistent with the Department of Defense (DoD) policy of availability of housing on an equal basis to all military personnel will not be used or distributed by Housing Referral Offices. Some commercial publications list the availability of housing that is not listed with the Housing Referral Office, and whose owners have not provided assurances of availability to all military personnel. These facilities cannot be recognized or recommended by DoD Components.

(m) *Reports*—(1) *Reporting requirements.* (i) A quarterly report is required for each installation performing housing referral services. The report will be prepared on DD Form 1656,[2] "Off-Base Housing Referral Report." DoD Components, as applicable, will prepare a separate summary report on DD Form 1656[2] for the quarters ending with March, June, September, and December. The summary will indicate the number of installations reporting by size classification, i.e., 500 and under military personnel assigned or over 500 military personnel assigned.

(ii) Initial reports under this part will be for the first quarter, calendar year 1969. One copy of each installation and a summary report will be submitted by each Military Department and DoD Agency to reach the Deputy Assistant Secretary of Defense

---

[2] Filed as part of original.

(Family Housing) by the 25th day following the end of the report quarter.

(2) *Instructions for completing DD Form 1656,*[2] *Off-Base Housing Referral Report"*—(i) *General instructions.* This report should be used by the preparing installation and other DoD Components to measure the progress, usage and effectiveness of the Housing Referral Offices and the Housing Referral Services. Joint Housing Referral Offices are responsible for all functions and responsibilities listed in this part, including single reporting on DD Form 1656[2] for all the installations served. Installations operating under a central coordinator, either by division of geographical area or as a joint activity, are each responsible for providing referral service and preparation and submission of DD Form 1656.[2]

(ii) *Specific instructions*—(*a*) *Item 1a—Installation or joint office.* Enter name of installation. Enter the word "joint" in parentheses if the installation serves and performs all referral services for other installations in the area.

(*b*) *Item 1b—Command.* Enter command identity.

(*c*) *Item 1c—Service.* Enter Service identity.

(*d*) *Item 2a—Report for.* Enter quarter and year being reported, e.g., January-March 1969. This is a calendar year report.

(*e*) *Item 2b—Over/under 500 military.* Check appropriate box to indicate whether installation or joint office has over or under 500 military personnel assigned or attached.

(*f*) *Lines 3 through 5—Race.* In columns a through k, enter by race the number of military personnel regardless of pay grade or marital status and/or military families (hereafter identified as military personnel) processed by the Housing Referral Office (HRO), housed either by the HRO or housed through other means, or number not housed 2 months or more. Exclude Government quarters.

(*g*) *Line 6—Total for quarter.* In columns a through k, enter totals of lines 3 through 5.

(*h*) *Line 7—Cumulative for year (calendar year).* In columns a through j, add and enter current "totals for quarter" in line 6 to "cumulative for year" totals reported on line 7 of previous quarterly report.

(*i*) *Line 8—Number of complaints alleging discrimination.* Self-explanatory.

(*j*) *Line 8a—Summary of complaints of discrimination.* Briefly summarize each complaint on installation reports. Summary reports should reflect the name of each installation reporting complaints and the number of such reports.

(*k*) *Line 9a—Number of valid complaints by military members.* Enter number of valid complaints regarding referral service.

(*l*) *Line 9b—Number of valid complaints by owner/agent/manager.* Enter number of valid complaints regarding referral service, military tenants, and the like made by owners/agents/managers, of off-base housing.

(*m*) *Lines 10 and 11—Signature and title.* Self-explanatory.

(*n*) *Line 12—Remarks.* Enter in line 12 any comments which would be helpful in explaining the local Housing Referral situation.

(*o*) *Column a—Number reporting to HRO.* For line 3 through 5, enter the number of military personnel (see (*f*) of this subdivision) reporting to the HRO for processing regardless of their desire for assistance. Column a should equal the totals of column b plus c.

(*p*) *Column b—Number not requesting assistance.* For lines 3 through 5, enter the number of military personnel (see (*f*) of this subdivision) reporting to HRO who decline any assistance in obtaining off-base housing other than the required counselling.

(*q*) *Column c—Number requesting assistance.* For lines 3 through 5, enter the number of military personnel (see (*f*) of this subdivision) requesting and provided referral assistance and counselling in obtaining off-base housing.

(*r*) *Column d—Number housed in rentals through HRO.* For lines 3 through 5, enter number of military personnel (see (*f*) of this subdivision) who, during the report month, advise that they obtained rental housing through vacant rental listings provided by the HRO. Government quarters not to be included.

(*s*) *Column e—Number housed in rentals through other (sources).* For lines 3 through 5, enter number of military personnel (see (*f*) of this subdivision) who, during the report month, advise that they obtained rental housing on their own and not from vacant rental listings provided by HRO.

(*t*) *Column f—Number housed in sales through HRO.* For lines 3 through 5, enter number of military personnel (see (*f*) of this subdivision) who, during the report month, advise that they obtained sales (home purchase) housing through sales listings provided by the HRO.

(*u*) *Column g—Number housed in sales through other (sources).* For lines 3 through 5, enter number of military personnel (see (*f*) of this subdivision) who, during the report month, advise that they obtained sales (home purchase) housing on their own and not from sales listings provided by the HRO.

(*v*) *Column h—Total housed through HRO.* For lines 3 through 5, enter the total of column d plus column f.

(*w*) *Column i—Total housed through other (sources).* For lines 3 through 5, enter the total of column e plus column g.

(*x*) *Column j—Combined total housed.* For lines 3 through 5, enter the total of column h plus column i.

(*y*) *Column k—Number not housed two months or more.* For lines 3 through 5, as of the last day of the quarter reported, enter the number of military personnel (see (*f*) of this subdivision) who have been unable to find permanent living accommodations after searching 2 months or more.

PART 242—ADMISSION POLICIES AND PROCEDURES FOR THE SCHOOL OF MEDICINE, UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
242.1 Purpose.
242.2 Applicability.
242.3 Definitions.
242.4 Policies.
242.5 Admission procedures.
242.6 Central point of contact.
242.7 Responsibilities.
242.8 Academic, intellectual, and personal requirements for admission to the first-year class.
242.9 Academic, intellectual, and personal requirements for admission to advanced standing.
242.10 Effective date and implementation.

AUTHORITY: 10 U.S.C. 2112, et seq. Pub. L. 92-426.

SOURCE: 41 FR 5389, Feb. 6, 1976, unless otherwise noted.

§ 242.1 Purpose.

This part establishes policies and procedures and assigns responsibilities for the selection of entrants to the School of Medicine of the Uniformed Services University of the Health Sciences (DoD Directive 5105.45, "Uniformed Services University of the Health Sciences," April 16, 1974).[1]

§ 242.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Uniformed Services University of the Health Sciences (USUHS), and the Department of Defense Medical Examination Review Board (DoD MERB).

§ 242.3 Definitions.

As used herein, the following definitions apply:

(a) *Uniformed Services.* As used herein, means the Army, Navy, Air Force, Marine Corps, and the Commissioned Corps of the Public Health Service.

(b) *Military Personnel.* For purposes of this Directive, "Military Personnel" shall include the following:

(1) Individuals currently on (or on orders for) active duty for a period of 90 days or more in any of the three Military Departments.

(2) Reserve component personnel enrolled in the Armed Forces Health Professions Scholarship Program.

(3) Persons enrolled in scholarship ROTC or advanced (junior-senior level) nonscholarship ROTC.

---

[1] Filed as part of original. Copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attn. Code 300.

(4) Individuals in attendance at any of the three Military Department Service Academies.

(c) *Federal-duty obligation.* The obligation to serve on active duty in the Army, Navy, Air Force, or the Commissioned Corps of the Public Health Service.

(d) *The program.* Means the Medical School program of the Uniformed Services University of the Health Sciences.

(e) *Member of the program.* An individual who is enrolled in the School of Medicine of USUHS.

(f) *Accredited institution.* A college, university, or institution located in the United States or Puerto Rico or Canada, and accredited by an accrediting agency or association that is recognized for such purpose by the U.S. Commissioner of Education. Included within this definition are those institutions which are in the process of seeking accreditation and currently have provisional or conditional accreditation, or candidacy status for accreditation, based solely on the newness of the institution.

(g) *Medical college admission test.* A nationally standardized examination, administered by the American Medical College Testing Program, which is designed to measure general and specific aptitude for medical studies.

§ 242.4 Policies.

(a) The School of Medicine, USUHS, shall consider applications for admission from persons who:

(1) Are citizens of the United States;

(2) Will not be more than 32 years of age as of 30 June in the year of contemplated graduation;

(3) Are not under 18 years of age at time of entry to the first-year class;

(4) Are of good moral character;

(5) Meet the physical qualifications and security requirements for a Regular commission in the Uniformed Services.

(i) Standards of medical fitness for commissioning in the Uniformed Services shall be chapter 5, AR 40-501[2] except for eyes and vision which shall be as prescribed in paragraphs 2-12 and 2-13, chapter 2.

(ii) Security requirements for commissioning in the Military Departments are prescribed in DoD Directive 5210.9.[3]

(6) Meet the academic, intellectual, and personal qualifications specified in §§ 242.8 and 242.9.

(7) Are motivated to pursue a medical career in the Uniformed Services;

(8) Are not otherwise obligated or committed for service in the Army, Navy, Air Force or Marine Corps as a result of current or prior participation in programs of study or training sponsored by these Military Services. (Unless specifically prohibited by law or Department of Defense policy, individuals may be permitted to interrupt sponsored training programs and/or associated service commitments for the purpose of entering the School of Medicine, at the discretion of the appropriate Military Department sponsor. See also paragraph (e) of this section on obligated service requirements.)

(b) In making admissions decisions, the School will adhere to the principle of equal educational opportunity for all. Sex, race, religion, national origin, marital status, and State of residence shall not be factors influencing the selection process. Aspirants seeking entrance shall be judged strictly on merit, in terms of demonstrated aptitude, motivation, and potential for succeeding in medicine, both academically and professionally. Only the most promising and best qualified of the applicants shall be accepted for admission.

(c) While enrolled in School, students shall serve on active duty as Reserve commissioned officers (Medical Officer Candidates), pay grade 0-1, in one of the Uniformed Services, the Uniformed Service of assignment to be determined under procedures established by the Secretaries of the Military Departments and the Assistant Secretary of Defense (Health and Environment) in coordination with the President of the University. Applicants' preferences shall be honored to the extent possible in making Service assignments. However, to insure that the makeup of each entering class is equitably constituted, students shall be assigned proportionally to the three Military Departments, based on projected end strengths of the individual Medical Corps at time of graduation. Students shall not be counted against any prescribed Service strengths while in School. Individuals admitted to the School of Medicine holding Regular commissions must resign their Regular appointments to enter the School.

---

[2] Army standards of medical fitness will be used as agreed to by the Secretaries of the Military Departments. AR 40-501 filed as part of original. Copies available at the Army Publication Counter, Rm 1B928, The Pentagon, Washington, D.C. 20310.

[3] See footnote 1 to § 242.1.

(d) Upon satisfactory completion of the medical school program, graduates shall, if qualified, be tendered Regular Medical Corps appointments, unless otherwise covered under 10 U.S.C. 2115.

(e) Graduates of the School shall incur a Federal active-duty obligation of 21 months for each year or portion thereof spent in medical training, except that in no case will the minimum obligation be less than 27 months. Except as law or Department of Defense policy otherwise prescribes, this obligation shall be served consecutively with any other active-duty obligation.

(f) If dropped from the School for deficiencies in conduct or studies, or for other reasons, the student shall immediately be referred for disposition to the appropriate Military Department, which shall have the prerogative of either:

(1) Requiring the individual to fulfill his incurred service obligation, as stated in the Uniformed Services Health Professions Revitalization Act of 1972 (10 U.S.C., 2101 et seq.), by performing duty in some appropriate capacity, as determined by the Secretary of the Military Department concerned. (In no case shall any such member be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such member be required to serve on active duty less than one year.); or

(2) Waiving the individual's incurred service obligation, if that action would be in the best interests of that Service. (Such relief, though, shall not relieve the individual from any other active-duty obligation imposed by established law.) Individuals whose service obligation is waived may, at the discretion of the Secretary of the Military Department concerned, be required to reimburse the Government for all or a part of the tuition and other educational costs incurred. However, a member of the program may not be relieved of his Service obligation solely because he is willing and able to reimburse the Government for all educational expenses.

(g) Periods of time spent in sponsored graduate medical education shall not count toward satisfying the medical school Federal-duty obligation.

§ 242.5 Admission procedures.

(a) *Application*—(1) *Civilians.* Civilians seeking admission to the School of Medicine shall make direct application following instructions published in the School catalog. These applications shall include an indication of Service preference(s).

(2) *Military personnel.* Formal application requirements shall be the same as those for civilians except that military personnel shall be required to have approval, in writing, from the Secretary of the Military Department concerned or his designee prior to submitting formal application to the School of Medicine for admission. The individual concerned shall initiate the request for approval to apply through appropriate Service channels. The Secretaries of the Military Departments, or their designees, shall consider the criteria in § 242.4(a)(1) through (5) and paragraph (a)(8) of that section as the basis for approving/disapproving such requests. An information copy of each approval shall be forwarded to the School of Medicine, USUHS, Attn: Assistant Dean for Academic Support. The School of Medicine shall not process a military person's application until official approval is received from the Military Department concerned.

(b) *Conditional selection of candidates for admission.* The School of Medicine shall review all applications

BEST COPY AVAILABLE

and conditionally select candidates to fill available class spaces. Those conditionally selected shall be the best qualified applicants, based on aptitude, intelligence, maturity, personality, emotional stability, diligence, stamina, enthusiasm, motivation, and other relevant factors, consistent with the practices followed by other professional training institutions.

(1) *Civilian selectees.* The School of Medicine shall ensure that civilian selectees meet the eligibility criteria in § 242.4(a) (1) through (4), paragraph (a) (6) and (7) of that section.

(2) *Military selectees.* Military Departments are required to screen and approve their personnel for criteria in § 242.4(a) (1) through (5), and paragraph (a)(8) of that section before they apply for admission. The School of Medicine shall ensure that all military selectees meet the eligibility criteria of § 242.4 (6) and (7).

(c) *Notification of conditional selection for admission.* The School of Medicine shall notify selectees in writing of their conditional selection for admission, with the stipulation that it is subject to review and confirmation by the Service in which selectees are assigned to serve.

(d) *Confirmation of selectees.* (1) The names and relevant credentials of selectees shall be referred by the School of Medicine to the Secretaries of the Military Departments or their designees. An informational copy of this action will be provided to the Assistant Secretary of Defense (Health and Environment).

(2) The Secretaries, or their designees, shall initiate necessary actions (records checks, physical examinations, and National Agency Checks, as required, consistent with § 242.4(a)(5)) to determine whether or not the selected candidates are acceptable for commissioning. (Physical examinations for military personnel, if required, shall be performed at the individual's supporting military medical facility and reviewed by the Department of Defense Medical Examination Review Board (DoDMERB). Physical examinations for civilians shall be scheduled and reviewed by the DoDMERB, in accordance with the procedures and policies that agency establishes.) Secretaries of the Military Departments, or their designees, shall advise the School of Medicine as to the acceptability for commissioning of candidates within 45 days of receipt of referral lists, furnishing reasons for those found nonacceptable.

(e) *Notification of acceptance for admission.* As soon as candidates are approved for commissioning by their appropriate components, they shall be advised in writing by the School of Medicine that they are unconditionally accepted for admission.

§ 242.6 Central point of contact.

The Assistant Dean for Academic Support, USUHS, is designated as the central point of contact for matters pertaining to the admission procedures outlined in § 242.5.

§ 242.7 Responsibilities.

(a) The President of the University shall:

(1) Develop and prescribe formal application procedures for admission to the School, consistent with the provisions of this part.

(2) Select candidates for admission to the School of Medicine in accordance with the policies and procedures prescribed in this part.

(3) Coordinate, as required, with the Military Department Secretaries or their designees to ensure the proper administration of the admissions process.

(4) Monitor, review, and evaluate the admissions process to assure its effectiveness and efficiency operationally, and make recommendations as required for the revision of the policies and procedures herein set forth.

(b) Secretaries of the Military Departments shall:

(1) Approve/disapprove requests of military personnel who want to apply to the School of Medicine, as prescribed herein.

(2) Carry out confirmatory requirements and ensure that the suspense for accomplishing these actions is met.

(3) Designate a representative in their respective areas to be responsible for overseeing and coordinating confirmatory action requirements. (Names of designees and any changes

in designations shall be furnished to the President of USUHS.)

(4) Ensure coordination of proposed implementing regulations with the President, USUHS.

(c) Assistant Secretary of Defense (Health and Environment) shall determine, in coordination with the Secretaries of the Military Departments and the President, USUHS, the number of spaces in each entering class to be allocated to the respective components.

(d) Director, DoDMERB, shall:

(1) Establish necessary policies and procedures, in coordination with the Military Departments, for scheduling and reviewing physical examinations for civilian selectees, and reviewing examinations for military selectees.

(2) Review and take final action on any requests for waiver of physical standards for admission to the School.

§ 242.8 Academic, intellectual, and personal requirements for admission to the first-year class.

Admission to the School of Medicine of the Uniformed Services University of the Health Sciences is on a competitive basis, with selection predicated on:

(a) Evidence of sound character and high motivation for a career in the Medical Corps of the Uniformed Services, and

(b) Evidence of sufficient intellectual ability and preparation to undertake successfully the study of medicine.

(1) *Academic requirements.* Recognizing that Service medicine needs individuals with a wide variety of interests and talents, the School of Medicine welcomes applications from individuals with a diversity of educational backgrounds. However, there are certain specific academic requirements that are requisite for admission. These are as follows:

(i) *College preparation.* All applicants must have attained a baccalaureate degree from an accredited academic institution prior to matriculation.

(ii) *Prerequisite course work.* Area of specialization in college is not a limiting factor in gaining admission to the School, but a strong foundation in the sciences basic to the study of medicine is a requirement for all entering students. The minimum undergraduate science prerequisites for entrance are:

(*a*) *Chemistry* (*inorganic or general*). 1 academic year including appropriate laboratory.

(*b*) *Organic chemistry.* 1 academic year including laboratory.

(*c*) *Mathematics.* 1 academic year.

(*d*) *Physics.* 1 academic year including laboratory.

(*e*) *Biology.* 1 academic year including laboratory.

An academic year of course work equates to that course work which extends over a two-semester or three-quarter period and carries a total credit of between 6 to 8 semester hours or 9 to 12 quarter hours. No application will be considered unless the applicant has completed the science prerequisites or is in the process of completing the last 8 semester hours (or 12 quarter hours) of these courses at time of making application.

In addition to the science requirements, all applicants must complete 6 semester hours (or the equivalent) of college English before matriculating. While the foregoing represent the minimum academic prerequisites for admission, preference generally will be shown to applicants who also have had some college course work in the humanities and/or the social and behavioral sciences, for these disciplines complement the study of medicine, contributing to an understanding of human behavior both in sickness and health.

(2) *Testing requirements.* Applicants for admission are required to have taken the Medical College Admission Test.

(3) *Evidence of character and motivation.* Judgments about character and motivation will be based on letters of reference, personal statements, evaluation reports, personality inventories, interviews, and such other credentials/techniques necessary, as determined by the School of Medicine, to assess thoroughly the noncognitive nature and potential of the aspirant. The School of Medicine will take the initiative in gathering data upon which to make noncognitive assessments of applicants.

§ 242.9 Academic, intellectual, and personal requirements for admission to advanced standing.

(a) Selection of students to advanced standing will be competitive, based on both cognitive and noncognitive factors. Demonstrated aptitude and motivation for a career in medicine in the Uniformed Services will be prime considerations in making admissions decisions. Only the most promising of candidates will be accepted, as judged by scholastic records, letters of recommendation, interviews, and such other credentials and/or appraisal techniques as may be deemed appropriate to use by the School of Medicine.

(b) To be eligible academically for admission to advanced-standing, applicants must have successfully completed the year of medical studies preceding the year in which they desire advanced placement. Only students from fully accredited medical schools will be eligible for transfer.

(c) Individuals who have received the D.D.S., D.M.D., Ph.D., D.O., or D.V.M. degrees, or candidates for these degrees will not be eligible for advanced placement in the School of Medicine at this time. They will only be considered for admission to the Freshman class. Advanced standing applicants are required to have taken the Medical College Admission Test.

§ 242.10 Effective date and implementation.

This part will become effective immediately. Three copies of proposed implementing regulations shall be forwarded to the Assistant Secretary of Defense (Comptroller) within 30 days.

PART 242a—PUBLIC MEETING PROCEDURES OF THE BOARD OF REGENTS, UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
242a.1 Applicability.
242a.2 Definitions.
242a.3 Open meetings.
242a.4 Grounds on which meetings may be closed, or information may be withheld.
242a.5 Procedure for announcing meetings.
242a.6 Procedure for closing meetings.
242a.7 Transcripts, recordings and minutes of closed meetings.
242a.8 Effective date.

AUTHORITY: 5 U.S.C. 552b (g); Pub. L. 94-409.

SOURCE: 42 FR 12853, Mar. 7, 1977, unless otherwise noted.

§ 242a.1 Applicability.

These procedures apply to meetings of the Board of Regents, Uniformed Services University of the Health Sciences (USUHS), including committees of the Board of Regents.

§ 242a.2 Definitions.

(a) "Board" or "Board of Regents" means the collegial body that conducts the business of the Uniformed Services University of the Health Sciences as specified in Title 10, United States Code, section 2113, consisting of:

(1) Nine persons outstanding in the fields of health and health education appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) The Secretary of Defense, or his designee, an ex officio member;

(3) The surgeons general of the uniformed services, ex officio members; and

(4) The Dean (President) of the University, an ex officio non-voting member.

(b) "Board Representative" means the individual named as Executive Secretary by the Board, or any person officially designated by the Board.

(c) "Chairman" means the presiding officer of the Board, designated by the President, as specified in Title 10, United States Code, section 2113.

(d) "Committee" means any formally designated subdivision of the Board, consisting of as least two Board members, authorized to act on behalf of the Board, including, the Board's standing committees (the Executive, Administrative Affairs, Educational Affairs, Fine Arts and Gifts, and Nominating Committees) and any ad hoc committees appointed by the Board for special purposes.

(e) "Meeting" means the deliberations of at least a majority of all Regents in being or for committees, the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include:

(1) Deliberations to open or close a meeting, or to release or withhold information, required or permitted by § 242a.5 or § 242a.6;

(2) Notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram; and

(3) Instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

(f) "Member" means a member of the Board of Regents.

(g) "Public Announcement" means posting notices on the Board's public notice bulletin board, and mailing announcements to persons on a mailing list maintained for those who desire to receive notices of Board meetings, and who pay such fee as may be determined by the Executive Secretary, not to exceed $10.00 per year, to cover the costs involved in such distribution.

(h) "Staff" includes the employees of the USUHS, other than the members of the Board.

[42 FR 12853, Mar. 7, 1977, as amended at 42 FR 63775, Dec. 20, 1977]

§ 242a.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Regents other than in accordance with these procedures. Every portion of every meeting of the Board of Regents or any committee of the Board shall be open to public observation subject to the exceptions provided in § 242a.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to record any of the discussions by means of electronic or other devices or cameras unless approval in advance is obtained from the Executive Secretary. The public will not participate in the meeting unless public participation is invited by the Board.

(c) The Executive Secretary shall be responsible for making physical arrangements that provide ample space, sufficient visibility, and adequate acoustics for public observation of meetings.

§ 242a.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement set forth in the second sentence of § 242a.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 242a.5 and 242a.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and

(2) Properly classified pursuant to such executive order;

(b) Relate solely to the internal personnel rules and practices of the USUHS;

(c) Disclose matters specifically exempted from disclosure by statute (other than Title 5, United States Code, section 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person, privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsibile for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except that this subsection shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or USUHS participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the USUHS of a particular case of formal adjudication pursuant to the procedures in Title 5, United States Code, section 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 242a.5 Procedure for announcing meetings.

(a) Except to the extent such such information is exempt from disclosure under the provisions of § 242a.4, in the case of each Board or committee meeting, the Board representative, shall make public announcement, at least 7 days before the meeting, of the following:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and telephone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The 7 day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting or deletion of subject matter may be changed following the public announcement required by paragraph (a) of this section only if the Board representative publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement re-

BEST COPY AVAILABLE

quired by paragraph (a) of this section only if:

(1) A majority of the entire voting membership of the Board of a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible; and

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and telephone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§ 242a.6 Procedure for closing meetings.

(a) Action to close a meeting or portion thereof, pursuant to the exemptions set forth in § 242a.4 shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting a portion or portions of which are proposed to be closed to the public pursuant to § 242a.4 or with respect to any information which is proposed to be withheld under § 242a.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in § 242a.4 (e), (f), and (g), the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board's representative may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close such meeting.

(f) Within 1 day following any vote taken pursuant to paragraphs (a), (b), (c), or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within 1 day of the vote taken pursuant to paragraphs (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 242a.4.

(g) For every meeting closed pursuant to paragraphs (a) through (j) of § 242a.4, the General Counsel or chief legal officer of the USUHS shall publicly certify before the meeting that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 242a.7.

§ 242a.7 Transcripts, recordings, and minutes of closed meetings.

(a) The Board of Regents shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, closed to the public pursuant to § 242a.4(j), the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete, verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within 10 days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Board shall make available to the public, in the offices of the Board of Regents, USUHS, Bethesda, Maryland, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Executive Secretary determines to contain information which may be withheld under § 242a.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the Executive Secretary to withhold information pursuant to paragraph (d)(1) of this section may be appealed to the Board. The appeal shall be circulated to individual board members. The Board shall make a determination to withhold or release the requested information within 20 days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

§ 242a.8 Effective date.

This part shall become effective on March 12, 1977.

PART 242b—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
242b.1 Regents.
242b.2 Meetings of the Board.
242b.3 Notice.
242b.4 Quorum.
242b.5 Voting.
242b.6 Committees.
242b.7 Officers of the University.
242b.8 Amendment of procedures—Rules of Order.

AUTHORITY: Uniformed Services Health Professions Revitalization Act, 10 U.S.C. 2112-17.

SOURCE: 42 FR 63775, Dec. 20, 1977, unless otherwise noted.

§ 242b.1 Regents.

(a) *History and name.* The Congress of the United States in the Uniformed Services Health Professions Revitalization Act of 1972, 10 U.S.C. 2112-17

(1972) created a collective body to conduct the business of the Uniformed Services University of the Health Sciences, and designated this body "the Board of Regents of the Uniformed Services University of the Health Sciences," referred to in these procedures as "the Board."

(b) *Number, duties.* Section 2113 of Title 10, United States Code, provides:

(1) the number of Regents on the Board;

(2) the manner of selection of the Regents;

(3) the terms of office of the Regents;

(4) the powers and duties of the Regents;

(5) the manner of selection of a Chairman of the Board;

(6) the compensation of the Regents.

(c) *Officers—(1) Designation—term—vacancies.* (i) The officers of the Board shall consist of a Chairman and a Vice Chairman.

(2) *Chairman of the Board.* (i) The Chairman of the Board shall preside at all meetings of the Board in accordance with these procedures.

(ii) The Chairman of the Board shall have the power to execute on behalf of the Board all instruments in writing which have been authorized by the Board and shall exercise such other powers as may be conferred upon him or her from time to time by the Board.

(3) *Vice Chairman of the Board.* (i) The Board of Regents shall elect from their own members a Vice Chairman.

(ii) The Vice Chairman shall serve for a term of one year or until a successor is elected.

(iii) The term of office of the Vice Chairman shall commence immediately upon election.

(iv) If the Chairman is absent or unable to act, the Vice Chairman shall exercise the powers and perform the duties of the Chairman.

(v) The Vice Chairman shall perform such other duties as may be directed from time to time by the Chairman and the Board.

(vi) If both the Chairman and Vice Chairman are absent or unable to act, the Board shall elect a member Acting Chairman.

(4) *Executive Secretary.* (i) The Board shall appoint an Executive Secretary, referred to in these Procedures as "the Secretary."

(ii) The Secretary shall have the power to perform such duties as generally pertain to the office and as may be conferred from time to time by the Board.

(iii) The Secretary shall notify the Regents of the time and place of all meetings of the Board, in accordance with these Procedures, and shall keep a complete record of its proceedings.

(iv) The Secretary shall furnish to every Regent prior to each meeting of the Board a copy of the Minutes of the preceding meeting.

(v) The Secretary shall give notice of the time and place of committee meetings, and if desired by the commitee or its chairman, the Secretary or an assistant shall attend the meeting and keep a record of the meeting.

(vi) The Secretary shall prepare and distribute expeditiously the minutes of all meetings of standing committees to all Regents.

(vii) The Secretary shall keep at the office of the University a copy of these General Procedures and Delegations, and the Public Meeting Procedures of the Board of Regents as periodically amended.

(viii) During the Secretary's absence or inability to act, an Assistant Secretary, appointed by the Chairman, shall act in the Secretary's place.

§ 242b.2 Meetings of the Board.

(a) *Regular meetings.* (1) The Board shall hold at least four (4) meetings in each annual period from October 1 to September 30.

(2) Unless otherwise determined by the Board, meetings shall be held at the offices of the University, 4301 Jones Bridge Road, Bethesda, Md. 20014.

(b) *Additional meetings.* (1) Additional meetings shall be called by the Secretary upon the written request of three or more Regents, delivered to the Secretary, or upon the direction of the Chairman or of the Dean of the University (President).

(2) Additional meetings of the Board shall be held at such times and places as shall be specified in the notice of meeting.

§ 242b.3 Notice.

(a) Notice of all meetings of the Board shall be sent by the Secretary to each Regent by mail, telegraph, or telephone.

(b) Mailing a notice not less than 7 days before any meeting, or sending a telegram not less than twenty-four hours before a meeting, addressed to each Regent at his or her residence or place of business; or actual notice by telephone to such person not less than twenty-four hours before the meeting, shall be sufficient notice of any meeting. The recital by the Secretary in the minutes that notice was given shall be sufficient evidence of the fact.

(c) A Regent may waive in writing notice of any meeting either prior to or subsequent to the holding of the meeting.

(d) Public announcement of meetings shall conform to the Public Meeting Procedures of the Board of Regents, 32 CFR 242a.5.

§ 242b.4 Quorum.

A majority of all Regents in being shall constitute a quorum of the Board.

§ 242b.5 Voting.

(a) The concurrence of a majority of the Regents present at a meeting shall be necessary for the transaction of business.

(b) Unless a written ballot is required by a Regent, no actions taken by the Board need be by written ballot.

(c) The Chairman of the Board and of each Committee is entitled to move, second, vote, and participate fully in any session to the same extent as if not a presiding officer.

(d) At the direction of the Chairman, action may be taken by a majority of the Regents by notation voting, by voting on material circulated to Regents individually or serially, or by polling of Regents individually or collectively by telephone or by telegram, or by similar procedure. Such action shall be reported by the Secretary at the next Board meeting.

§ 242b.6 Committees.

(a) *Standing committees.* (1) The regular standing committees of the Board shall be:

(i) The Educational Affairs Committee;

(ii) The Administrative Affairs Committee;

(iii) The Gifts Committee;

(iv) The Executive Committee.

(2) The committees shall meet at the call of the Committee Chairman.

(3) Permanent minutes of all meetings shall be kept, and shall be open for inspection to all Regents.

(b) *Special committees.* (1) The Special Committees of the Board shall be:

(i) The Nominations Committee;

(ii) The Rules Committee. Each shall meet at the call of its chairman.

(c) *Meetings on request.* The chairman of any committee shall call a meeting upon the request of one member of the committee.

(d) *Number and appointment of members.* (1) Execpt for the Executive Committee, the members of each committee and a chairman for each committee shall be appointed by the Chairman.

(2) The Chairman shall report any committee membership or chairmanship appointment to the Board at the regular meeting following the appointment.

(e) *Terms.* (1) Except as otherwise provided herein, the term of office of any chairman or other member of a committee shall run from the date of his or her appointment by the Chairman for one year following such appointment, or until successor is appointed.

(2) A majority of the Regents present at a meeting may remove any committee member or committee chairman at any time.

(f) *Quorum.* Unless otherwise provided, a majority of the members of any committee shall constitute a quorum.

(g) *Educational Affairs Committee.* This Committee shall make recommendations to the Board on academic matters referred to the Committee by the Chairman of the Board, including the administration of student and faculty academic affairs.

(h) *Administrative Affairs Committee.* This Committee shall make recommendations to the Board on all budget and other matters relating to the fiscal and general business management of the University, on the planning for and general development of the University, and on construction, maintenance and repair of the buildings, grounds and utilities of the University, referred to the Committee by the Chairman of the Board.

(i) *Gifts Committee.* This Committee shall make recommendations to the Board regarding donations of gifts.

(j) *The Executive Committee.* (1) This Committee shall be composed of:

(i) The Chairman of the Board;

(ii) The Vice Chairman of the Board;

(iii) The Secretary of Defense or his designee;

(iv) The Dean of the University (President); and

(v) A member of the Board appointed by the Chairman.

The Dean of the University shall be a non-voting member whose presence shall not be counted for the purpose of determining a quorum at any Executive Committee meeting.

(2) The Executive Committee shall possess all powers of the Board of Regents except the power:

(i) To change the General Procedures and Delegations;

(ii) To appoint or remove the Dean of the University (President), Dean of the School of Medicine, Chairpersons of Departments and tenured faculty;

(iii) To amend the tenure policy of the University;

(iv) To establish post doctoral, postgraduate, and technological institutes;

(v) To establish programs in continuing medical education;

(vi) To agree to utilize Federal medical resources on a reimbursable basis;

(vii) To affiliate with other universities.

(k) *Nominating Committee.* (1) This Committee shall from time to time review a list of persons who possess the necessary qualifications to serve as Regents and shall make recommendations to the Board for presentation to the President of the United States.

(2) The Committee shall at all times welcome suggestions of names to be considered for inclusion in this list from any individual or group interested in the University.

(l) *Committee on Rules.* This Committee shall have general supervision of all matters arising under the General Procedures and Delegations and those concerning Rules of Order, and shall advise the Chairman and the Board with respect to all questions connected with these matters.

[42 FR 63775, Dec. 20, 1977, as amended at 48 FR 26451, June 8, 1983]

§ 242b.7 Officers of the University.

(a) *Dean of the University.* (1) The Regents shall appoint a Dean of the University who shall also be known as the President.

(2) The President shall be appointed or removed only by an affirmative vote of a majority of the Regents.

(3) At meetings of the Board of Regents, the President shall be counted for the purpose of determining the presence of a quorum but shall not vote.

(4) At committee meetings other than the Executive Committee, the President shall be counted for the purpose of determining the presence of a quorum, and shall vote.

(5) The President shall be responsible for the management of the University and all its departments.

(6) The President shall report to the Board at each regular meeting on problems and progress of the University, and shall make recommendations for action.

(7) To assist in the performance of his or her duties, the President with the approval of the Board, shall appoint, to act under the President's authority and direction, officers as follows:

(i) Vice President of the University.

(ii) Dean of the School of Medicine.

(iii) Associate Dean for Academic Affairs.

(iv) Associate Dean for Operations.

(v) Associate Dean for Continuing Education.

(vi) Commandant.

(8) The President, with the approval of the Board, may appoint and prescribe the powers and duties of other officers, as he or she may deem proper.

BEST COPY AVAILABLE

(9) If there is no one holding the office of President, the Board may appoint an Acting President to perform the duties of the President for such period of time as the Board may determine. If the Acting President is also a Regent, he or she shall retain the powers and duties of a Regent while so acting.

(b) *Duties of Officers*—(1) *Vice President of the University.* (i) The Vice President of the University will assist the President and will perform such duties as may be directed from time to time by the President.

(ii) In the absence of the President, the Vice President shall act for the President.

(2) *Dean of the School of Medicine.* (i) The Dean of the School of Medicine shall be responsible for planning, directing, and managing the activities of the School of Medicine.

(ii) He or she shall recommend to the President and to the Board, personnel for faculty appointments and will perform such duties as may be directed from time to time by the Board or the President.

(iii) He shall recommend to the President persons for appointment as the Associate Dean of the School of Medicine, Associate Dean for Operations, Associate Dean for Academic Affairs and such other administrative positions as he deems proper.

(3) *Associate Dean for Academic Affairs.* (i) The Associate Dean for Academic Affairs shall be responsible for the overall management and supervision of the University's Basic Sciences Departments, Clinical Sciences Departments, and the Academic Sections.

(ii) In the absence of the Dean, he or she shall act for the Dean.

(4) *The Associate Dean for Operations.* (i) The Associate Dean for Operations shall be responsible for the support of the educational and research activities of the University but not limited to:

(A) Financial Management;

(B) Building Services and Materiel Acquisition;

(C) Grants Management;

(D) Civilian personnel;

(E) Instructional and Research Support;

(F) Learning Resources Center; and

(G) Computer Operations.

(ii) He or she shall be responsible for the preparation of the University budget estimates and program submission presentations for the approval of the Board.

(iii) He or she shall make all books, records or vouchers available for the inspection of any member of the Board and shall report at each meeting of the Administrative Affairs Committee.

(iv) In the absence of the Dean and the Associate Dean for Academic Affairs, he or she shall act for the Dean.

(5) *Associate Dean for Continuing Education.*

(i) The Associate Dean for Continuing Education shall be responsible for all continuing education at the University to include its accreditation.

(ii) The Associate Dean for Continuing Education shall report to the Dean, School of Medicine, or to the individual acting on behalf of the Dean.

(6) *Commandant.*

(i) The Commandant shall assist the Dean of the School of Medicine in planning, developing, and directing the military activities and functions of the School of Medicine.

(ii) In the absence of the Dean, Associate Dean for Academic Affairs, and Associate Dean for Operations, he or she shall act for the Dean.

(Uniformed Services Health Professions Revitalization Act (10 U.S.C. 2112-17))

[42 FR 63775, Dec. 20, 1977, as amended at 47 FR 24298, June 4, 1982; 49 FR 42928, Oct. 25, 1984; 50 FR 16230, Apr. 25, 1985]

§ 242b.8 Amendment of procedures—Rules of Order.

(a) *Amendments.* These general procedures and delegations may be amended at any meeting of the Board of Regents by the affirmative vote of two-thirds (⅔) of the Regents present at the meeting; provided, however, that notice of proposed amendments and the text of such amendments have been distributed at the preceding meeting and have accompanied the notice of the current meeting, or there is a duly completed waiver of notice.

(b) *Order of business.* The order of business shall be at the discretion of the Chairman unless otherwise specified by the Board.

(c) *Rules of Order.* In the determination of all questions of parliamentary usage, the decision of the presiding officer shall be based upon the latest available revision of *Robert's Rules of Order.*

PART 243—INTERGOVERNMENTAL COORDINATION OF DoD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

243.1 Purpose.
243.2 Applicability and scope.
243.3 Definition.
243.4 Policy.
243.5 Responsibilities.
243.6 Procedures.

APPENDIX A—DOD PROGRAMS AND ACTIVITIES INCLUDED UNDER THIS RULE [NOTE]
APPENDIX B—EXAMPLES OF FEDERAL PROGRAMS AND ACTIVITIES THAT MAY AFFECT THE DEPARTMENT OF DEFENSE [NOTE]
APPENDIX C—DOD LIAISON REPRESENTATIVES FOR INTERGOVERNMENTAL COORDINATION OF DOD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES [NOTE]
APPENDIX D—PROCEDURES FOR DOD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES [NOTE]

AUTHORITY: E.O. 12372 (July 14, 1982; 47 FR 30959); section 401(b), Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(b)).

SOURCE: 48 FR 29141, June 24, 1983, unless otherwise noted.

§ 243.1 Purpose.

This rule under E.O. 12372 and 31 U.S.C. 6506 et seq. updates policies, assigns responsibilities, and prescribes procedures for an intergovernmental process to assist coordination of appropriate DoD Federal development programs and activities in the United States with State and local governments and Federal agencies, and to encourage state and local governments and Federal agencies to coordinate their programs and activities with the Department of Defense.

§ 243.2 Applicability and scope.

(a) This rule applies to the Office of the Secretary of Defense, the Military Departments (excluding the civil works function of the U.S. Army Corps of Engineers) and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Neither E.O. 12372 nor this rule are intended to create any right or benefit enforceable at law by a party against the Department of Defense or its officials.

(c) This rule covers all programs and activities developed by DoD Components for military construction (as defined in DoD Instruction 7040.4), acquisition of real property, substantial changes in existing use of military installations and real property, and disposal of real property that may affect state and local government or other Federal agency community development programs and activities, and state, local, and other Federal agency programs and activities that may affect DoD activities.

(d) A list of the DoD programs and activities subject to E.O. 12372 is at Appendix A. An illustrative list of other Federal programs and activities that may affect the Department of Defense is at Appendix B.

§ 243.3 Definition.

State. Any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 243.4 Policy.

It is the policy of the Department of Defense to promote an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed DoD Federal development; and to encourage the opportunity to review other agency programs and activities that may affect the Department of Defense.

§ 243.5 Responsibilities.

(a) The *Executive Secretary to the Secretary of Defense,* having been designated by the Secretary of Defense as the DoD intergovernmental coordination point of contact, shall act as the focal point for all matters relating to E.O. 12372.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD(MRA&L)) shall develop policy and shall:

(1) Have overall management responsibility for intergovernmental coordination of DoD Federal development programs and activities,

(2) Monitor the implementation of E.O. 12372 within the Department of Defense.

(c) The *Heads of DoD Components* shall:

(1) Establish and maintain an intergovernmental coordination management process concerning DoD Federal development programs and activities described in Appendix A.

(2) Monitor the application of policies, responsibilities, and procedures contained in this rule within their subordinate elements.

(3) Designate an official to be the point of contact for intergovernmental coordination and review matters covered by this rule and report his or her name, position, and office to the ASD(MRA&L).

(4) Develop procedures that will ensure that a record of state comments, reviews, determinations, recommendations, and the status of programs and activities are maintained.

(5) Designate an official, in accordance with Appendix C, who shall serve as a DoD liaison representative to the states in the respective Federal regions for all DoD intergovernmental coordination matters. The identification of the liaison representatives shall be provided to the ASD(MRA&L) who shall publish a directory of liaison representatives in the FEDERAL REGISTER. The liaison function shall be in addition to the representative's regular duties.

§ 243.6 Procedures.

(a) DoD Components shall establish and maintain an intergovernmental coordination management process, reflected in a cooperative agreement when feasible, to achieve full consultation with state, regional, and local entities for those programs and activities covered by this rule. DoD Components shall encourage reciprocal actions with regard to the State, regional, and local programs and activities.

(b) DoD Components shall establish and maintain an inter-agency coordination management process to ensure their development programs and activities are consistent and compatible with the development actions of Federal agencies operating at the local levels. DoD Components shall encourage reciprocal actions by other Federal agencies with regard to their programs and activities. Unresolved conflicts shall be brought to the attention of the ASD(MRA&L).

(c) DoD Components that conduct activities or operate installations that may be affected by the programs and activities of Federal agencies shall take part in the community planning process by providing information, policy, and position statements on those programs and activities to the agencies concerned.

(d) The degree of public interest in a proposed program or activity shall be considered when deciding whether the Congress and the public shall be notified before offering information for comment as prescribed in this rule.

(e) In an emergency, provisions of this rule may be waived by the Secretary of the Military Department concerned. Such instances will be reported to the ASD(MRA&L).

(f) This rule does not affect normal cooperative community planning or coordination relationships between DoD installations and surrounding communities.

(g) Further procedures for DoD Federal development programs are prescribed at Appendix D.

APPENDIX A—DOD PROGRAMS AND ACTIVITIES INCLUDED UNDER THIS RULE

EDITORIAL NOTE: For the text of Appendix A, see 48 FR 29142, June 24, 1983.

APPENDIX B—EXAMPLES OF FEDERAL PROGRAMS AND ACTIVITIES THAT MAY AFFECT THE DEPARTMENT OF DEFENSE

EDITORIAL NOTE: For the text of Appendix B, see 48 FR 29142, June 24, 1983.

APPENDIX C—DOD LIAISON REPRESENTATIVES FOR INTERGOVERNMENTAL COORDINATION OF DOD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

EDITORIAL NOTE: For the text of Appendix C, see 48 FR 29142, June 24, 1983.

APPENDIX D—PROCEDURES FOR DOD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

EDITORIAL NOTE: For the text of Appendix D, see 48 FR 29142, June 24, 1983.

PART 244—HONORARY AWARDS TO PRIVATE CITIZENS AND ORGANIZATIONS

Sec.

244.1 Purpose.
244.2 Applicability and scope.
244.3 Policy.
244.4 Department of Defense component awards.
244.5 Department of Defense awards.
244.6 Presidential awards.

AUTHORITY: Sec. 202, 76 Stat. 517; 10 U.S.C. 133; sec. 301, 80 Stat. 379, 5 U.S.C. 301.

SOURCE: 35 FR 18277, Dec. 1, 1970, unless otherwise noted.

§ 244.1 Purpose.

This part establishes policies, eligibility criteria, and procedures to be observed by Department of Defense components in recognizing or recommending to the Secretary of Defense the recognition of private citizens or organizations for significant achievements which have benefited one or more Department of Defense components or the Department of Defense as a whole.

§ 244.2 Applicability and scope.

The provisions of this part apply to all components of the Department of Defense (Military Departments, Defense Agencies, and the Office of the Secretary of Defense).

§ 244.3 Policy.

(a) *General.* Appropriate recognition will be granted to private citizens, groups, or organizations which contribute significant assistance or support to DoD functions, services or operations for the purpose of (1) demonstrating the interest of Department of Defense management in improving efficiency and effectiveness, and (2) encouraging citizens and organizations in their efforts to assist in the accomplishment of Department of Defense missions.

(b) *Eligibility.* (1) Any person, group, or organization, except those described in paragraph (b)(2) of this section, may be considered for recognition under the provisions of this part on the basis of a significant contribution to the Department of Defense performed as a public service. Such contributions may consist of exemplary service in an advisory capacity to a Department of Defense committee, program, or project; direct assistance to a Department of Defense component through actions or useful ideas which are beneficial in eliminating or minimizing problems or otherwise contributing to mission accomplishment; assistance through the cooperative use of facilities, equipment, or manpower; courageous or heroic actions in support of a Department of Defense activity or mission; or other actions resulting in significant benefits to the Department.

(2) The following are ineligible for recognition under this part:

(i) Military and civilian personnel of the Department of Defense who are eligible for recognition in accordance with DoD Directive 5120.16, "Department of Defense Incentive Awards Program: Policies and Standards," June 20, 1969,[1] and applicable Department of Defense and Military Department regulations on awards and decorations.

(ii) Persons or organizations having a commercial or profit-making relationship with the Department of Defense or a Department of Defense component, unless it is shown that the contribution is substantially beyond that specified or implied within the terms or contract establishing the relationship, and it is clearly in the public interest.

---

[1] Filed as part of original. Single copies of this issuance may be obtained by writing the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 300.

(3) Honorary awards under this part shall not be granted routinely to successive individuals or organizations performing the same service. Awards shall be recommended and approved only after consideration of the significance and merits of the contribution made in each separate case. Prior to submitting nominations, nominating officials should ascertain that presentation of the award would not embarrass the Department of Defense.

(c) *Letters of appreciation.* The more modest contributions of private citizens or groups to Department of Defense functions or operations should also be recognized. Letters of appreciation may and should be issued by officials at appropriate levels in recognition of service or assistance considered worthy of such an expression even though not warranting an award under this part.

§ 244.4 Department of Defense component awards.

(a) Each Department of Defense component shall establish at least two levels of honorary awards for citizens' achievements, consisting of:

(1) An award to be granted by the head of the component for contributions of major significance to the component as a whole;

(2) An award authorized for issuance at a designated lower level for contributions of more limited scope or impact.

(b) Department of Defense components may establish other awards for private citizens or organizations as they deem appropriate, subject to the policies set forth in § 244.3.

(c) Awards granted by heads of Department of Defense components may take the form of suitably designed medals, plaques, and/or certificates. Lower level awards will normally consist of certificates of commendation or appreciation.

(d) DoD components will develop eligibility criteria based on this Part and Federal Personnel Manual, chapter 451, subchapter 3-12, for each award level, including guidelines to assist in identifying citizen/organizational assistance and contributions of extremely significant or exceptional benefit which may warrant consideration for the Department of Defense Medal for Distinguished Public Service or the Department of Defense Meritorious Award (see § 244.5 (a) and (b)).

(1) In determining which level of award is most appropriate, consideration shall be given to the scope, magnitude, impact, and overall significance of the service performed.

(2) Individuals recommended for the Department of Defense Medal for Distinguished Public Service shall not be given a component level award for the same achievement unless the higher level award is disapproved.

(e) Individual DoD component committees shall be established to review recommendations for (1) awards to be granted by heads of Department of Defense components, and (2) nominations for Department of Defense level awards.

(f) Department of Defense components shall insure appropriate publicity in announcing and presenting awards.

§ 244.5 Department of Defense awards.

(a) *Department of Defense Medal for Distinguished Public Service.* (1) The Department of Defense Medal for Distinguished Public Service shall consist of a citation signed by the Secretary of Defense, a medal and a rosette.

(2) To be eligible for this award, the nominee shall be a civilian:

(i) Who does not derive his principal livelihood from Federal Government employment;

(ii) Who at any time since enactment of the National Security Act in 1947 (*a*) has performed exceptionally meritorious service of significance to the Department of Defense as a whole, or (*b*) has performed meritorious service of such exceptional significance to a Department of Defense component or function that recognition at the component level is deemed insufficient; and

(iii) Whose service or assistance was performed at considerable personal sacrifice and inconvenience and was motivated by patriotism, good citizenship, and a sense of public responsibility.

(3) Nominations shall be submitted through heads of DoD components,

the Director of Defense Research and Engineering, or Assistant Secretaries of Defense, as appropriate, to the Assistant Secretary of Defense (Administration).

(i) Documentation shall be included giving factual evidence that a highly significant service has been provided to the Department of Defense.

(ii) A statutory level committee convened by the Secretary of Defense will review each nomination and may either recommend the granting of the medal or disapprove the nomination

(4) Only the Secretary of Defense may approve the granting of this medal. He may (i) approve its awarding to a nominee recommended by the review committee or (ii) authorize its granting to any other deserving individual selected by him on his own initiative.

(5) Upon the approval or authorization of the medal, the Assistant Secretary of Defense (Administration) will notify the Assistant Secretary of Defense (Public Affairs) who will insure that presentations of the medal are given appropriate public affairs support.

(6) The Department of Defense Medal for Distinguished Public Service may be awarded posthumously and presented to the next of kin in the following order:

(i) Widow or widower.

(ii) Eldest son.

(iii) Eldest daughter.

(iv) Father.

(v) Mother.

(7) Medals will normally be presented either by the Secretary or Deputy Secretary of Defense or by the head of the Department of Defense component or Assistant Secretary of Defense submitting the nomination.

(8) The Assistant Secretary of Defense (Administration) shall maintain records of all nominations and their disposition and provide any administrative support required by the review committee established by the Secretary.

(b) *Department of Defense Meritorious Award.* (1) The Department of Defense Meritorious Award shall consist of a certificate signed by the Secretary of Defensg.

(2) It may be granted to organizations (including corporations, associations, and other groups) for outstanding contributions to the national Defense effort involving the material furtherance of an established Department of Defense program and requiring considerable effort on the part of the organization concerned in the planning and execution of the service rendered. This award will not be used to recognize the efforts of industrial organizations which meet or exceed Department of Defense production quotas.

(3) Recommendations with factual justification may be submitted by heads of Department of Defense components, the Director of Defense Research and Engineering, Assistant Secretaries of Defense, and the chairman of any OSD board, committee, or council.

(4) Recommendations will be transmitted to the Assistant Secretary of Defense (Public Affairs) who will (i) obtain the advice of and coordinate his efforts with officials and agencies within and outside the Department of Defense as required, and (ii) transmit his comments on the appropriateness of the recommendation to the Secretary of Defense.

(5) Under no circumstances will organizations be advised that they are under consideration for this award.

(6) Upon approval, certificates will normally be transmitted to the recommending official for presentation to recipients.

(7) The Assistant Secretary of Defense (Public Affairs) will maintain records on all recommendations and disposition thereof and will provide appropriate public affairs support in the award process.

(c) *Awards to entertainers and sponsors of entertainment units.* Procedures and criteria for such awards are set forth in the DoD Instruction 1330.13, "Armed Forces Professional Entertainment Program Overseas," March 25, 1970.[1]

---

[1] See footnote 1 to § 244.3(b)(2)(i).

BEST COPY AVAILABLE

§ 244.6 Presidential awards.

(a) *Presidential Medal of Freedom.* (1) The Presidential Medal of Freedom may be awarded in two degrees to any person who has made an especially meritorious contribution to (i) the security or national interests of the United States, or (ii) world peace, or (iii) cultural or other significant public or private endeavors.

(2) Criteria for this award are set forth in Executive Order 9586 (3 CFR Part 410).

(b) *Presidential Citizens Medal.* (1) This medal may be bestowed upon any citizen of the United States who has performed exemplary deeds of service for his country or his fellow citizens.

(2) Criteria for this award are set forth in Executive Order 11494 (34 FR 18291).

(c) *Procedure.* Nominations for either Presidential award originating within the Department of Defense will be submitted with full justification by heads of Department of Defense components, the Director of Defense Research and Engineering, or Assistant Secretaries of Defense, as appropriate, to the Special Assistant to the Secretary of Defense, who will provide a recommendation to the Secretary as to whether or not the nomination should be referred to the President.

(d) *Records.* The Assistant Secretary of Defense (Manpower and Reserve Affairs) shall maintain records on all recommendations and disposition of Presidential award nominations originating in the Department of Defense.

PART 245—PLAN FOR THE SECURITY CONTROL OF AIR TRAFFIC AND AIR NAVIGATION AIDS (SHORT TITLE: SCATANA)

Sec.
245.1 Foreword.
245.2 Explanation of terms.
245.3 The SCATANA Plan.
245.4 Application of Emergency Security Control of Air Traffic (ESCAT).
245.5 Implementation of Security Control of Air Traffic and Air Navigation Aids.
245.6 Tactical air movement plans.
245.7 Extract of Tactical Air Movement Plan.
245.8 Wartime, Air Traffic Priority List (WATPL).
245.9 Procedures for movement of air traffic.
245.10 SCATANA testing.
245.11 Authentication.

AUTHORITY: 5 U.S.C. 301, 552.

SOURCE: 41 FR 9322, Mar. 4, 1976, unless otherwise noted.

§ 245.1 Foreword.

(a) This part is promulgated in furtherance of the Federal Aviation Act of 1958, as amended, the Communications Act of 1934, as amended, and Executive Order 11490, and supersedes: Plan for the Security Control of Air Traffic and Air Navigation Aids—June 1971.

(b) This part defines the responsibilities of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) and the appropriate military authorities for the security control of civil and military air traffic, and control of federal and non-federal air navigation aids.

§ 245.2 Explanation of terms.

For the purpose of this part and supporting documents, the following explanations apply:

(a) *Air defense emergency.* An emergency condition which exists when attack upon the continental United States, Alaska, Canada, or U.S. installations in Greenland by hostile aircraft or missiles is considered probable, is imminent, or is taking place.

(b) *Air defense identification zone.* Airspace of defined dimensions within which the ready identification, location and control of aircraft is required.

(c) *Air navigation aid (NAVAIDS).* (1) Federal NAVAIDS. VOR, VORTAC, TACAN and LORAN stations owned and operated by an agency of the Federal Government such as the FAA, Military Services and United States Coast Guard.

(2) Non-Federal NAVAIDS. VOR, VORTAC and TACAN stations licensed by the FCC.

(d) *Appropriate military authorities.* Within the NORAD area of responsibility—CINCNORAD AND NORAD region commanders. CINCNORAD has delegated all actions associated with the appropriate military authority to

NORAD region commanders. Outside the NORAD area of responsibility—the Commander in Chief, or his designated representative, of unified or specified commands for U.S. areas located within their area of responsibility.

(e) *Defense area.* Any airspace of the United States (other than that designated as an ADIZ) in which the control of aircraft is required for national security.

(f) *Defense emergency.* An emergency condition which exists when:

(1) A major attack is made upon U.S. forces overseas, or allied forces in any area, and is confirmed either by the commander of a unified or specified command or higher authority.

(2) An overt attack of any type is made upon the United States and is confirmed either by the commander of a command established by the Secretary of Defense or higher authority.

(g) *Dispersal.* Relocation of aircraft to predesignated dispersed operating bases for the purpose of increasing survivability.

(h) *Diversion.* The intentional change of a flight from its intended destination for operational or tactical reasons.

(i) *Emergency Security Control of Air Traffic (ESCAT) Rules.* Emergency rules for the security control of air traffic prior to the declaration of Air Defense Emergency (see § 245.4).

(j) *FAA Region.* A geographical subdivision of the area for which the FAA is responsible.

(k) *Implement SCATANA.* The phrase used to direct FAA to commence those actions required in the SCATANA plan (see § 245.5).

(l) *Nontactical air traffic.* Civil or military flights other than tactical air traffic.

(m) *North American Air Defense Command (NORAD).* An integrated United States—Canadian command. NORAD includes, as component commands, the United States Air Force Aerospace Defense Command and the Canadian Forces Air Defense Command.

(n) *NORAD Region.* A geographical subdivision of the area for which NORAD is responsible.

(o) *Rerouting.* The intended deviation of a flight from its original course without changing its destination.

(p) *SARDA.* State and Regional Disaster Airlift. A plan for the use of nonair carrier aircraft during a national emergency.

(q) *SCATANA.* The short title for the joint DoD/DOT/FCC plan for the Security Control of Air Traffic and Air Navigation Aids.

(r) *Security control authorization.* Military authorization for an aircraft to take off when ESCAT is applied or SCATANA has been implemented. (See §§ 245.5 and 245.8).

(s) *Tactical air traffic.* Military flights actually engaged in operational missions against the enemy, flights engaged in immediate deployment for a combat mission, and preplanned combat and logistical support flights contained in Emergency War Plans.

(t) *United States.* The several states, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories and possessions of the United States (including areas of air, land, or water administered by the United States under international agreement), including the territorial waters and the overlying airspace thereof.

(u) *Wartime Air Traffic Priority List (WATPL).* The list comprises eight priorities designed to control the volume of air traffic when SCATANA has been implemented. (See § 245.5, §§ 245.6 and 245.8).

(v) *The use of the words "will" and "shall."* For the purpose of this Part, use of the words will and shall denotes mandatory compliance by the affected persons or agency(ies).

(w) *List of Acronyms and Abbreviations.*

ADIZ—Air Defense Identification Zone.
ARTCC—Air Route Traffic Control Center.
ATC—Air Traffic Control.
CINCNORAD—Commander in Chief North American Air Defense.
CRAF—Civil Reserve Air Fleet.
DoD—Department of Defense.
DVFR—Defense (ADIZ) Visual Flight Rules.
ESCAT—Emergency Security Control of Air Traffic.
EWO—Emergency War Orders.

BEST COPY AVAILABLE

FAA—Federal Aviation Administration.
FCC—Federal Communications Commission.
ICAO—International Civil Aviation Organization.
IFR—Instrument Flight Rules.
JCS—Joint Chiefs of Staff.
LORAN—A hyperbolic system of navigation, i.e., LORAN-A and LORAN-C systems of navigation.
NAVAID—Navigation Aid.
NORAD—North American Air Defense.
SAC—Strategic Air Command.
SARDA—State and Regional Disaster Airlift.
SCATANA—Security Control of Air Traffic and Air Navigation Aids.
TACAN—Tactical Air Navigation.
VFR—Visual Flight Rules.
VHF—Very High Frequency.
VOR—VHF Omnirange.
VORTAC—VHF Omnirange/Tactical Air Navigation.
WASP—War Air Service Program.
WATPL—Wartime Traffic Priority List.

§ 245.3 The SCATANA Plan.

(a) *Purpose.* The purpose of this part is to establish responsibilities, procedures and instructions for the security control of civil and military air traffic and NAVAIDS which will provide for the most effective use of airspace under various emergency conditions.

(b) *Authority.* (1) The Joint Chiefs of Staff directives which outline NORAD responsibilities for the development of plans and policies in concert with the FAA and FCC for the establishment of a system for identification and security control of air traffic and air NAVAIDS.

(2) Federal Aviation Act of 1958, as amended.

(3) Communications Act of 1934, as amended.

(4) Executive Order 11490.

(5) The National Security Act of 1947, as amended.

(c) *Scope.* This part applies to all United States territory over which the FAA has air traffic control jurisdiction. For the purpose of this part, the appropriate military authorities within this territory are as follows:

(1) For the NORAD area of responsibility, NORAD region commanders have been designated as appropriate military authority by CINCNORAD.

(2) Outside the NORAD area, the commander, or his designated representative, of the unified-specified command exercising operational control over the area.

(d) *General description of the plan.* This part is intended to meet two types of situations. These are outlined below, together with a general summary of the actions required.

(1) In the first situation, an emergency may develop which does not meet the criteria for the declaration of a Defense Emergency or Air Defense Emergency, but in the interests of hemispheric and national security requires identification and control of all aircraft operating in the defense area, its coastal approaches or any parts of these areas. Under such conditions, the following actions, which are described in more detail in § 245.3, will be taken:

(i) The appropriate military authority will direct the FAA Air Route Traffic Control Center (ARTCC) concerned to apply Emergency Security Control of Air Traffic (ESCAT) in the affected area.

(ii) The ARTCC will advise all aircraft operating under its control and relay ESCAT implementation instructions to appropriate aeronautical facilities within its area that ESCAT rules have been applied and will then issue any special security instructions which are required to identify, locate and ensure immediate control of all air traffic.

(iii) When ESCAT is applied, all aircraft must file IFR or DVFR flight plans and comply with the special security instructions issued. These instructions may require diverting or rerouting airborne flights and, using a system of security control authorizations, restrictions to proposed flights not already airborne.

(2) In the second situation, an emergency will have arisen which has resulted in the declaration of Defense Emergency outside the NORAD area, Air Defense Emergency within the NORAD area, or both of these. Under such conditions the following actions, described in detail in § 245.5, will be taken:

(i) The appropriate military authority will direct the FAA ARTCC concerned to implement Security Control of Air Traffic and Air Navigation Aids (SCATANA).

(ii) The ARTCC will relay SCATANA implementation to appropriate aeronautical facilities, will direct all VFR traffic under its control to land and file an IFR/ DVFR flight plan, and will implement other directions specified by the appropriate military authority. These may include grounding, diversion and other restrictions to flight, plus the control of navigation aids.

(iii) Aircraft movements will be controlled by the use of the WATPL except for specific exceptions which will be controlled by using a Security Control Authorization.

(iv) The NORAD Region in its transmission of SCATANA air traffic control instructions to the ARTCC will clearly state which WATPL Numbers are authorized to operate. This information will also include any special authorizations for operations under Security Control Authorizations procedures (see § 245.8).

(e) *Amplifying Instructions*—(1) *Interference with normal air traffic.* This will be minimized, consistent with the requirement for operation of the air defense system.

(2) *Supplements for essential civil air operations.* Appropriate Unified-Specified commands, in collaboration with the FAA region directors will prepare annexes and agreements supplementing this plan for their area of responsibility. These supplements are to consider the special requirements of organized civil defense and disaster relief flights, agricultural and forest fire flights, border patrol flights and other essential civil air operations to the end that maximum use of these flights, consistent with air defense requirements will be made when SCATANA and ESCAT are in effect.

(3) *Vital military flights to have priority.* Military air operations vital to national defense are to be given priority over all other military and civil aircraft through procedural handling by the Air Traffic Control (ATC) systems as specified in coordinated agreements or authorizations for particular operations (see § 245.8).

(4) *One Military authority to direct ARTCCs.* In consonance with this plan, appropriate military authorities will direct the extent of security control of air traffic and air navigation aids as required by the military situation. Such directions will be issued to appropriate FAA ARTCCs for implementation. The area of responsibility of the appropriate military authority may not be congruent with ARTCC boundaries, especially in the NORAD area where one ARTCC's boundaries may lie within two or more NORAD regions. To prevent confusion, agreements will be developed between appropriate military authorities and the ARTCCs concerned to ensure that each ARTCC receives direction from one military authority only. Unless operational requirements dictate otherwise, directed SCATANA actions will be consistent throughout an individual ARTCC area.

(5) *Tactical air movements plans.* To assist appropriate military authorities in making a preliminary assessment of wartime air traffic patterns and to simplify the transition to SCATANA operations, major commands are to coordinate the air traffic movement section of their Emergency War Plans (including dispersal and evacuation) and preposition flight plan information with appropriate military authorities. This authority is the NORAD region commander within the NORAD area of responsibility. Detailed requirements are explained in § 245.6.

(6) *Testing procedures.* To insure that implementing actions can be taken expeditiously, SCATANA tests will be conducted periodically in accordance with § 245.10.

(7) *Dispersal actions.* Prior to or subsequent to the declaration of a Defense Emergency or an Air Defense Emergency, there may be a requirement to disperse civil and military aircraft for their protection. If such dispersal plans are implemented when any part of this plan has been placed in effect, operations will be in accordance with the requirements of that portion of the SCATANA plan which is in effect. If any part of the SCATANA plan is ordered while dispersal is in progress, dispersal operations will be revised as required to comply with SCATANA.

(8) *Communications.* Direct communications are authroized between appropriate agencies and units for the

purpose of coordinating and implementing the procedures in this plan.

(9) *Review and revision.* All concerned agencies are encouraged to continuously monitor this plan for adequacy and currency. Hq NORAD, acting as executive agent for DoD, will process and distribute administrative and organizational changes as they occur. However, this plan will be reviewed at least once every two years by FAA, FCC, and NORAD and reissued or changed as required. Recommended changes should be forwarded to:

Headquarters, North American Air Defense Command.
Ent Air Force Base, Colorado 80912.

(f) *Responsibilities.* (1) The Commander in Chief, NORAD will:

(i) Establish the military requirements for the Security Control of Air Traffic and Air Navigation Aids.

(ii) Coordinate with the Administrator, FAA, and the Defense Commissioner, FCC, as appropriate, regarding the establishment of procedures for implementation.

(2) The Administrator, FAA will:

(i) Promulgate the necessary FAA directives/plans, including special ATC procedures to implement this plan.

(ii) Coordinate with appropriate military authorities prior to the establishment of procedures for this plan.

(iii) Maintain liaison with appropriate NORAD region commanders through appropriate FAA offices.

(iv) Administer this plan in accordance with requirements established by the Commander in Chief, North American Air Defense Command.

(v) Collaborate with the FCC in establishing procedures for control of non-Federal NAVAIDS as defined in this plan.

(3) Federal Communications Commission will:

(i) Engage in rule making or other actions as appropriate in support of this plan.

(ii) Collaborate with the FAA in establishing procedures for control on non-Federal NAVAIDS as defined in this plan.

(4) Appropriate Military Authorities will:

(i) Direct the control of NAVAIDS (VOR, VORTAC, TACAN and LORAN) in their areas, as required.

(ii) Issue security control instructions to appropriate FAA region/ARTCC as necessary to insure performance of their air defense mission.

(iii) Maintain liaison with appropriate FAA regional directors and FCC Regional Liaison Officers.

(iv) Conduct tests of this plan in coordination with the FAA and FCC.

(v) Collaborate with the FAA regional director and FCC Regional Liaison Officer in making supplemental agreements to this plan.

(5) The FAA Regional Directors will:

(i) Assure FAA participation with the NORAD region commanders in the testing of this plan in the NORAD region areas.

(ii) Ensure dissemination of information and instructions concerning this plan within their areas of responsibility to civil and military aeronautical facilities and civil pilots.

(iii) Place in effect procedures outlined in this plan in accordance with requirements established by appropriate military authorities.

(iv) Assist appropriate military authorities in making supplemental agreements to this plan as may be required.

(6) The FCC Regional Liaison Officers will:

(i) Maintain liaison with the NORAD region commanders and FAA regional directors with regard to participation of FCC licensed aeronautical navigational aids in this plan.

(ii) Disseminate information and instructions concerning this plan to FCC licensed navigational aids affected by this plan.

(iii) Assist the NORAD region commanders in making such supplemental agreements to this plan as may be required.

(7) Commanders of Responsible Major Commands will:

(i) Ensure that the air traffic movement sections of the Emergency War Plans are coordinated with appropriate military authorities.

(ii) Ensure that flight plans in support of their coordinated Emergency War Plans are prepositioned with appropriate military authorities and the FAA. (See § 245.6).

(iii) Identify specific NAVAIDS (VOR, VORTAC, TACAN and LORAN) which are essential to support contingency operations of assigned forces during implementation of SCATANA. The appropriate military authority will, except under actual emergency air defense situations, ensure that such air NAVAIDS within their area of responsibility remain in operation. Control of LORAN C will be in accordance with the JCS Master Navigation Plan (SM 525-XX). If actual emergency air defense situations require shutdown of these air NAVAIDS, the appropriate military authority will immediately notify the respective commander of the affected major command of the shutdown.

§ 245.4 Application of Emergency Security Control of Air Traffic (ESCAT).

(a) *Situation.* Emergency conditions exist which threaten national security but do not warrant the declaration of Defense Emergency, Air Defense Emergency or the control of air NAVAIDS.

(b) *Intention.* To provide for the most effective use of airspace in the affected area by:

(1) Ensuring that the position of all friendly air traffic is known and can be contacted by radio, if necessary.

(2) Controlling the density of air traffic operating in airspace critical to the conduct of air defense operations.

(c) *Application.* (1) The appropriate military authority will take the following actions:

(i) Direct the affected ARTCCs to apply ESCAT.

(ii) Specifically define the affected area.

(iii) Define the types of restrictions to be placed in effect. These may require the diverting and rerouting of traffic, the restricting of traffic to certain areas or corridors, and the initiating of a requirement to obtain a Security Control Authorization prior to take-off.

(iv) Within NORAD, the region commander will advise CINCNORAD who will then advise the Administrator, FAA and the Defense Commissioner, FCC, that ESCAT has been applied. Outside NORAD the appropriate military authority will advise the Administrator, FAA and the Defense Commissioner, FCC directly. When time is vital notification may occur after ESCAT has been implemented.

(v) Direct the appropriate ARTCCs to relax or terminate restrictions as the tactical situation allows.

(2) ARTCCs will take the following actions when directed to apply ESCAT:

(i) Disseminate ESCAT instructions and restrictions received to air traffic, civil and military air traffic control facilities, flight service stations and other appropriate aeronautical facilities.

(ii) Impose the restrictions on air traffic as directed by the appropriate military authority. The restrictions will automatically include instructions for all VFR traffic to land at the nearest suitable airport and file an IFR/DVFR flight plan.

(iii) Civil and military air traffic control facilities, and other aeronautical facilities will disseminate to air traffic and aircraft operators, and will implement, those instructions and restrictions received from the ARTCCs. When an IFR or DVFR flight plan has been filed, it will be examined by the appropriate aeronautical facility to ensure that it conforms with the ESCAT restrictions placed in effect by the appropriate military authority. When a flight plan does conform with the ESCAT restrictions, the appropriate aeronautical facility will grant a Security Control Authorization and the flight can then be given take-off clearance. When a flight plan does not conform with the ESCAT restrictions, a Security Control Authorization will not be given and take-off clearance will be denied.

(iv) The pilot in command will take the following actions when ESCAT is applied:

(*a*) If airborne, comply with the instructions issued by the appropriate aeronautical facility.

(*b*) If not airborne, file an IFR or DVFR flight plan prior to take-off and comply with the instructions issued by the appropriate aeronautical facility.

(*c*) Aircraft which are not radio equipped may not file an IFR or DVFR flight plan and will not be permitted to operate in areas affected by ESCAT.

§ 245.5 Implementation of Security Control of Air Traffic and Air Navigation Aids.

(a) *Situation.* Three types of situations may require the implementation of SCATANA.

(1) In the first of these, an emergency has arisen which has resulted in the declaration of an Air Defense Emergency within the NORAD area. Under this condition SCATANA will be automatically implemented.

(2) In the second situation, which applies only to NORAD, a NORAD region commander may direct implementation of SCATANA for his region when his region or an adjacent region is under attack and Air Defense Emergency has not yet been declared.

(3) In the third situation, an emergency has arisen which has resulted in the declaration of a Defense Emergency outside the NORAD area. Under this condition, SCATANA may be considered for implementation.

(b) *Intention.* To provide for the most effective use of airspace by aircraft of civil and military agencies by:

(1) Exercising security control of civil and military aircraft entering, departing or moving within the U.S. areas and their coastal approaches.

(2) Selectively limiting air traffic, consistent with air defense requirements.

(3) Exercising control over the following air navigation systems: VOR, VORTAC, TACAN and LORAN.

(c) *Implementation.* (1) The appropriate military authority will take the following actions:

(i) Direct the appropriate ARTCC to implement SCATANA.

(ii) Specify what restrictions are to be implemented, such as:

(*a*) Routing restrictions on flights entering or operating within appropriate portions of the defense area.

(*b*) Restrictions for the volume of air traffic within the defense area, using the WATPL (See § 245.8) and Security Control Authorizations.

(*c*) Altitude limitations on flight operations in selected areas.

(*d*) Special instructions concerning the control of accurate navigation aids which permit their use for friendly aircraft operations. This includes continued operation, as long as the actual air defense situation permits, of those air NAVAIDS essential to support other major command contingency operations.

(*e*) Confirmation or modification of previous instructions which may have been implemented with the application of ESCAT.

(iii) Revise or remove restrictions to the movement of air traffic and control of air navigation aids as the tactical situation permits.

(2) ARTCCs will take the following actions when directed to implement SCATANA:

(i) Disseminate SCATANA implementation instructions to civil and military air traffic control facilities and other appropriate aeronautical facilities.

(ii) Impose the restrictions on air traffic as directed by the appropriate military authority. The restrictions will automatically include instructions for all VFR traffic to land at the nearest suitable airport and file an IFR or DVFR flight plan. Landing, diversion or dispersal of traffic, when ordered, will be to airports outside of metropolitan areas or likely target complexes whenever possible. Instructions will be passed over normal air/ground/air radio channels.

(iii) As directed by the appropriate military authority, implement the control of VOR, VORTAC, TACAN, and LORAN as follows:

(*a*) Shut down the above navigation aids in accordance with the military command/FAA region supplemental agreements. These shall permit time to land/disperse airborne aircraft, and shall provide for the extension of such times when the air traffic situation dictates.

(*b*) Aids which require more than five minutes control time shall be shut down as soon as possible, except when directed otherwise by the appropriate military authority, or unless such aids are essential for the regulation and control of existing air traffic.

(c) Direct the control of air navigational aids to ensure that required aids, as indicated in flight plans, will be available for authorized aircraft flights.

(iv) When directed to reduce or remove SCATANA restrictions, authorize resumption of air traffic and operation of air navigation aids as specified by the appropriate military authority.

(3) Civil and military air traffic control facilities, and other appropriate aeronautical facilities will:

(i) Maintain the current SCATANA ACTION Form for that facility at appropriate operating positions.

(ii) When SCATANA is implemented or terminated, take the actions indicated on the facility's SCATANA ACTION Form.

(iii) Maintain current information on the status of restrictions imposed on air traffic.

(iv) Approve or disapprove filed flight plans in accordance with current instructions received from the ARTCCs. Approval will indicate that the flight is permitted under the WATPL priority currently in effect or that the flight has been granted a Security Control Authorization.

(v) Forward flight plans and approval requests to the ARTCC as required.

(vi) Disseminate instructions and restrictions to air traffic as directed by the ARTCCs.

(4) The pilot in command will conform to security control instructions as follows:

(i) IFR flights—comply with instructions received from the appropriate aeronautical facility.

(ii) VFR flights—land at the nearest suitable airport when so directed.

(iii) Aircraft on the ground—file an IFR or DVFR flight plan with the proper FAA facility and receive approval prior to departure.

§ 245.6 Tactical Air Movement Plans.

(a) *Situation.* In a situation when Emergency War plans and other contingency plans are being implemented, the large volume of tactical air traffic generated is likely to result in conflicting requirements for the available airspace. It is obvious that such conflicts should be minimized in order to prevent saturation of the air defense system, yet at the same time permit the orderly execution of the various contingency plans. To this end, it is essential that responsible military commanders coordinate fully with the appropriate military authorities responsible for air defense to ensure that conflicting situations can be resolved while emergency plans are still under development. The provisions of this section do not apply to Strategic Air Command (SAC) Emergency War Orders (EWOs) for which special coordination has been effected between SAC, NORAD and FAA agencies.

(b) *Intention.* To establish coordination procedures necessary to fulfill air defense and air traffic control requirements for the movement of tactical air traffic and identify specific air NAVAIDS which are essential to support contingency operations of major command forces during implementation of SCATANA.

(c) *Execution.* (1) Commanders of Major Commands (or "Responsible Military Commanders") are to ensure that:

(i) The air traffic movement sections of their Emergency War Plans (including dispersal, evacuation and other related contingency plans) and the specific air NAVAIDS essential to support contingency operations are fully coordinated during development with the appropriate military authority responsible for air defense. In the NORAD area of responsibility the authority is the NORAD region commander. When flights will transit more than one region, coordination must be effected with all of the region commanders involved. The NORAD region commander will effect necessary coordination on those tactical operations with the FAA through the Region Air Defense Liaison Officer (RADLO).

(ii) Subsequent to the coordination required in the paragraph (c)(1)(i) of this section, extracts of the air traffic movement section of their plans are to be passed to the appropriate military authorities. The extracts are to be prepared according to the format shown in § 245.7. In the NORAD area of responsibility the extracts are to be sent to the Commander of the NORAD region in which the flights originate.

(2) Responsible military authorities will:

(i) During the coordination phase, ensure that proposed aircraft movements do not conflict in time, altitude, route or any other respect with other planned movements. Potential conflicts are to be resolved through negotiations with the commands involved.

(ii) On receipt of the tactical air movement plan extracts, review again their impact on the overall air situation, incorporate the extracts into the unit SCATANA plan, as supplements, and distribute the extracts to appropriate military agencies, FAA regions and ARTCCs.

§ 245.7 Extract of Tactical Air Movement Plan.

____
(Unit)

____
(Office symbol)

____
Address

____
Project officer name and phone number
Mission name

SCATANA ________________________________
(NORAD region of flight plan origination)

____
(Number assigned by region)

____
(WATPL number)

(a) ____________________________________
(Call sign, or VCSL block line of flight lead)

(b) ____________________________________
(Number and type aircraft NAV equip)

(c) ____________________________________
(Departure base, ICAO 4 letters)

(d) ____________________________________
(Level-off point elasped time) (direct or airway route)

____
Points to penetration fix

(e) ____________________________________
(Destination total time enroute) (ICAO 4 letters)

(f) "E" hour plus ________________________
(ETD)

____
(Interval planned between aircraft, cells, or flights)

Altitude Reservation Void on hour after last ETD.

(g) ______________ KT
(TAS)

MARSA within this flight.

____
(Military assumes responsibility for separation of aircraft)

All other call signs are: ________________

____

§ 245.8 Wartime Air Traffic Priority List (WATPL).

(a) *Situation.* When SCATANA is implemented, a system of traffic priorities is required in order to ensure that optimum use is made of airspace, consistent with air defense requirements. This system will be the prime means of controlling the volume of air traffic. (The Security Control Authorization will be used as a supplement to WATPL.)

(b) *Intention.* To establish a WATPL for the movement of air traffic when SCATANA has been implemented, and to provide policy guidance for the practical application of the system. Priorities shall take precedence in the order listed and subdivisions within priorities are equal.

(c) *Wartime Air Traffic Priority List*—(1) *Priority One.* (i) Aircraft engaged in active continental defense missions. This includes interceptors, antisubmarine aircraft and airborne early warning and control aircraft.

(ii) Retaliatory aircraft, including their direct support aircraft, executing EWO.

(iii) Airborne command elements which provide backup to command and control systems for the combat forces.

(iv) The President of the United States and Prime Minister of Canada and respective cabinet members essential to national security.

(2) *Priority Two.* (i) Forces being deployed for or in direct and immediate support of combat operations against the enemy to include the use of activated Civil Reserve Air Fleet (CRAF) aircraft as necessary.

(ii) SAC aircraft in direct and immediate support of EWO not included in priority one.

(iii) Search and rescue aircraft operating in support of these activities.

(3) *Priority Three.* (i) Forces being deployed in support of combat operations against the enemy.

(ii) Continental Air Reconnaissance for Damage Assessment (CARDA) missions for the support of immediate combat operations.

(iii) Search and rescue aircraft not included in priority two.

(iv) Flight inspection aircraft flights in connection with emergency restoration of airway and airport facilities in support of immediate combat operations.

(4) *Priority Four.* Dispersal of:

(i) Tactical military aircraft.

(ii) U.S. air carrier aircraft assigned to the War Air Service Program (WASP).

(iii) U.S. civil air carrier aircraft allocated to the CRAF Program.

(iv) FAA flight inspection aircraft.

(v) Foreign civil air carrier aircraft in the U.S. in accordance with specific international agreements.

(vi) Public aircraft assigned to FAA and other Federal agencies.

(5) *Priority Five.* (i) The air transport of military commanders, their representatives, and DoD sponsored key civilian personnel which is of the utmost importance to national security, or which will have an immediate effect upon combat operations of the Armed Forces.

(ii) Dispersal of nontactical military aircraft for their protection.

(iii) Public aircraft assigned to FAA and other Federal agencies.

(6) *Priority Six.* (i) Flight operations in accordance with approved Federal and State emergency plans (WASP and SARDA). U.S. civil air carrier flights will operate under the provisions of CAB Air Transport Mobilization Order ATM-1, "Route Authorizations and Operations," and the WASP. Foreign civil air carrier flights will operate in accordance with specific international agreements.

(ii) Other essential CARDA missions not included in paragraph (c)(3)(ii) of this section.

(iii) Flight inspection activity in connection with airway and airport facilities.

(7) *Priority Seven.* Other military flight operations.

(8) *Priority Eight.* All other flight operations not specifically listed above.

(d) *Policy for Application of WATPL.* (1) The restrictions embodied in the WATPL will apply to all aircraft except those in receipt of a Security Control Authorization.

(2) Priority will be solely dependent on the nature of the aircraft's mission. Operational test flights will take the priority of the mission aircraft tested.

(3) The originator of a request for aircraft movement will be responsible for determining and verifying the appropriate priority in accordance with the list described above.

(4) The individual filing the flight plan will be responsible for including the priority number as determined by the originator of the request.

(5) During general war conditions, situations may occur which cannot be related to the WATPL. Aircraft emergencies and inbound international flights which have reached the point of no return, including foreign air carrier flights enroute to safe haven airports in accordance with specific international agreements are examples of such situations. These incidents must be treated individually through coordination between ATC and appropriate military agencies in consideration of the urgency of the inflight situation and existing tactical military conditions.

(6) During periods other than general war, aircraft movements are handled as follows:

(i) Involvement in limited war or execution of contingency plans, to include JCS directed actions, immediately makes successful completion of such action a primary national objective. Therefore, aircraft movements in support of these actions will be afforded expeditious handling by the ATC system commensurate with the degree or urgency stated by the JCS to the FAA. When directing the execution of a contingency/limited war plan, or other JCS directed operation which is in pursuit of primary national objectives, the JCS will so advise the FAA (or appropriate Canadian authority if Canadian airspace is involved), requesting that aircraft operating in accordance with such plans be given preferential handling over all air traffic except active air defense missions and launch of the strategic alert force and supporting aircraft. Should contingency, limited warfare, or other JCS directed plans be executed concurrently by more than one operational commander, the JCS will state to the FAA (or appropriate Canadian authority when Canadian airspace is involved), and the military commanders concerned, the relative urgency of each operation and will resolve conflicts that may arise therefrom.

(ii) Assignment of reserved airspace to accommodate military air operations which, because of their objectives, cannot be conducted in accordance with routine ATC procedures will be based upon an order of precedence for the purpose of resolving mission conflicts in planning altitude reservations. This order of precedence is published in appropriate Joint Service Regulations and FAA documents.

(7) Priorities for air traffic clearances required under the SCATANA plan are not to be confused with civil priorities assigned to civil air carrier aircraft under the WASP priorities system, or to general aviation civil aircraft under the SARDA plan. WASP and SARDA priorities are designed to provide for controlled use of civil aircraft capability and capacity, and they have secondary significance when the WATPL for the movement of aircraft is in effect.

§ 245.9 Procedures for movement of air traffic.

(a) *Situation.* The primary instrument used by NORAD region commanders to control the volume of air traffic operating within their areas of responsibility is the WATPL for Movement of Air Traffic (§ 245.8).

(b) *Intention.* To establish procedures necessary for the expeditious movement of tactical air traffic during periods when SCATANA is in effect.

(c) *Execution.* (1) Tactical air traffic assigned a WATPL number of 1 or 2 will not be delayed, diverted, rerouted, or landed by NORAD region commanders. However, NORAD region commanders may recommend that this traffic be rerouted to avoid battle or battle threatened areas.

(2) Air traffic assigned a WATPL number other than 1 or 2 may be delayed, diverted, rerouted, or landed by the NORAD region commander to prevent degradation of the air defense system.

(3) Aircraft being "recovered" will be expedited to home or alternate base, and "search and rescue" aircraft expedited on their missions; but such aircraft may be diverted to avoid battle areas or take off may be delayed to prevent saturation of airspace.

(4) Tactical air traffic will file IFR flight plans and comply with IFR procedures regardless of weather. The appropriate WATPL number will be entered in the Remarks section in the Aircraft Clearance Form DD 175. The WATPL number will be posted on ARTCC flight strips passed from one ARTCC to the next, and to the appropriate air defense control facilities.

(5) For mass military operations a single clearance form will be filed and ALTRAV procedures will be applied.

(6) Compliance with approved flight plan and position report requirements is of utmost importance for identification. Aircraft aborting or deviating from an approved flight plan will airfile a revised flight plan as soon as the necessity for such deviation is evident. Unauthorized deviations may preclude identification and result in engagement by defensive weapons.

(d) *Special operations.* (1) The volume of air traffic in areas critical to air defense can be controlled by means of the WATPL. In areas that are not critical to air defense or in areas of poor or no radar coverage, the appropriate military authority may wish to authorize additional specific flights which may not qualify for a high enough priority under the WATPL. When ESCAT or SCATANA have been implemented the appropriate military authority may authorize flights by granting a Security Control Authorization to the ARTCC or agency requesting the clearance.

(2) The following flights may require the granting of a Security Control Authorization prior to take off:

(i) Organized civil defense missions.

(ii) Disaster relief flights.

(iii) Agricultural and forest fire flights.

(iv) Border patrol flights.

(v) SARDA flights prior to WATPL Six.

§ 245.10 SCATANA testing.

(a) *Situation.* To insure that SCATANA actions can be taken expeditiously, SCATANA tests will be conducted periodically.

(b) *Intention.* (1) SCATANA tests will be conducted in connection with Headquarters NORAD or NORAD region large-scale simulated exercises. Additional tests may be conducted by individual NORAD regions when test objectives are local in nature.

(2) All Federal facilities responsible for SCATANA actions will participate in SCATANA tests, except where such participation will involve the safety of aircraft. Non-federal civil aeronautical facilities may be requested to participate.

(c) *Execution.* (1) During SCATANA tests, all actions will be simulated.

(i) Aircraft will not be grounded or diverted.

(ii) Air navigation aids will not be shut down.

(iii) Test messages will not be transmitted over air/ground/air radio frequencies.

(iv) Radio communications will not be interrupted.

(2) For NORAD Exercises.

(i) If ESCAT is applied by CINC NORAD, this fact will be passed to the Region SCATANA Officer in plain language. Region SCATANA officers may call or simulate calling the appropriate ARTCC using the following statement:

> This is a NORAD exercise. Apply ESCAT. ARTCC acknowledge and take no further action.

(ii) If ESCAT is applied or SCATANA is implemented by the Region Commander, the Region SCATANA Officer may simulate the call or may make an actual call using the format shown in paragraph (c)(2)(i) of this section, and inserting ESCAT or SCATANA as appropriate.

(3) SCATANA Test. This is a test conducted by ARTCC's in which SCATANA participants conduct simulated notification actions required by the plan. Timing of the test will be at the discretion of the ARTCC. A narrative summary of each test is to be prepared by the ARTCC MLO and copies sent to appropriate NORAD Region SCATANA Officer, FAA Region MLO, FAA NORAD RDLO and FAA NORAD Hq LO. FAA NORAD Hq LO will be responsible for reviewing the SCATANA tests reports and recommending changes to the testing procedures to Hq NORAD as deemed appropriate. The SCATANA tests will be conducted at least quarterly.

(4) SCATANA Diversion Simulation. This is a test designed to exercise ARTCC personnel in making decisions on aircraft diversion which would be required under actual implementation of the plan. The timing of the simulation will be pre-coordinated between the ARTCCs and the NORAD Region SCATANA Officer. The guideline timeframe for the area recovery of all non-essential air traffic in actual operations has been fixed at an optimum of twenty minutes; diversion simulation exercises should operate on a similar timeframe. Tests will be conducted at least semi-annually.

(i) The NORAD region will provide charts to the ARTCC for the recording of simulated aircraft diversions. The completed charts will be passed to the NORAD Region SCATANA Officer for analysis. The NORAD Region SCATANA Officer will brief region staffs on the results of the exercise and FAA representation will be invited.

(ii) The charts will record the position of all live aircraft on IFR clearances in the ARTCC's area at the time ESCAT was simulated, the position of all aircraft when SCATANA was simulated, and will show the airports to which simulated diversions were made.

§ 245.11 Authentication.

Authentication is not required between NORAD Region Control Centers and ARTCCs for the implementation of SCATANA.

PART 246—GUARD/RESERVE FORCES FACILITIES PROJECTS

Sec.

246.1 Reissuance and purpose.
246.2 Applicability.
246.3 Policies and procedures.
246.4 Minor construction, repair, and restoration-of-damage projects.
246.5 Reporting.
246.6 Exceptions.
246.7 Definitions.
Enclosure 1
Enclosure 2
Enclosure 3

Authority: 10 U.S.C. 2202.

Source: 44 FR 11774, Mar. 2, 1979, unless otherwise noted.

§ 246.1 Reissuance and purpose.

This part is being reissued to publish current policy on the acquisition of facilities for the Guard and Reserve components of the Armed Forces, including minor construction and repair of facilities. Substantive changes include:

(a) Adjustments in the levels of project approval authority; (b) the deletion of certain reporting requirements; (c) the addition of new requirements concerning the submission of justification data in support of projects; (d) a modification of the definition of minor construction projects; (e) a requirement for a site survey for all projects that involve land acquisition; and (f) delegation of approval authority for repair projects to the Secretaries of the Military Departments.

§ 246.2 Applicability.

The provisions of this directive apply to the Military Departments. The term "Military Services" refers to the Army, Navy, the Air Force and the Marine Corps.

§ 246.3 Policies and procedures.

(a) *General.* (1) Facilities will be provided that will make the greatest contribution to readiness and that are essential for the proper development, training, operation, support (including troop housing and messing) and maintenance of the Guard and Reserve components, who must meet approved operational readiness and mobilization requirements for (i) units in the Guard and Reserve forces and (ii) individual reservists with specific mobilization assignments.

(2) Each proposed construction project in excess of $175,000 that involves the use of authority contained in 10 U.S.C. 133 shall be submitted to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) or a designee for approval and notification of the Congress, as required by 10 U.S.C. 2233a(1). No obligation of construction funds shall be made until after the expiration of 30 calendar days from the date that the Congress has been notified for project approval. If no Congressional objections have been received after 30 calendar days, the Military Departments automatically have the authority to obligate construction funds subject to the reprograming procedures noted in § 246.3(b)(1).

(i) Projects will not be forwarded for the 30-day Congressional notification period unless they are in the final stages of design and the final cost estimate, prior to contract award, has been determined. The Military Departments will note any deviation from this policy in their covering memorandum, with full justificaton for an early processing of the notification.

(ii) A project may be programed when the total actual strength of the assigned units at the installation is 50 percent of the total authorized strengths of the proposed facility. Congressional notification for all projects will not normally be initiated until the total actual on-board strength is a minimum of 75 percent of the total authorized strength of the proposed facility. Further, for all projects where the total actual strength is 85 percent or less than the total authorized, a statement will be included in the notification request relating the requirement to current and projected personnel strengths. If the requested project is required to support understrengthed units and is not directly dependent upon on-board personnel strengths such as a maintenance shop, a statement will be included with the justification documents indicating that the requirement is based upon factors other than personnel strength plus any other pertinent information which will justify conclusively the requirement.

(iii) For omnibus projects; e.g., energy conservation investment program, pollution abatement program, etc., a list of individual projects will accompany and support the construction request at the time of Congressional notification prior to contract award. It is expected that the projects as indicated will be constructed as part of the omnibus project. No deviation is authorized unless prior approval is received from the ASD(MRA&L) or a designee.

(iv) Each project costing $175,000 or less will be accomplished under the minor construction appropriation in lieu of lump sum military construction authorization. Construction projects costing $50,000 or less may be financed from appropriations available for maintenance and operations of installations or the minor construction appropriation.

(v) No project shall be incremented in order to circumvent any limitations.

(vi) Any subsequent increase in the estimated cost that exceeds 125 percent of the project cost as initially approved shall be submitted, with justification, to the original approval authority for appropriate adjustment and, for projects which ultimately exceed $175,000, notification of the Armed Services Committees by the ASD(MRA&L) or a designee. At the conclusion of 14 calendar days from the date of initiation of notification the Military Departments shall assume that the project has been approved at the increased cost unless notified to the contrary by the ASD(MRA&L) or a designee. For projects that exceed $400,000 established reprograming procedures and prior approval must be obtained before funds can be obligated. All such increases must be accommodated within the military construction program authorization. Projects shall be reflected in reports required by § 246.5.

(vii) For those projects whose ultimate costs do not exceed $175,000, the Secretary of the Military Department concerned or a designee shall approve all cost increases. This authority may be redelegated by the Secretary.

(viii) The approval of any increase in estimated cost shall not constitute authority to increase the scope of the project as originally approved.

(ix) The criteria for the determination of "total project cost" are prescribed in DoD Directive 7040.2,[1] "Program for Improvement in Financial Management in the Area of Appropriations for Acquisition and Construction of Military Real Property," January 18, 1961.

(b) *Programing of Guard and Reserve Forces facilities*—(1) *Programs.* Annual and updated long-range programs for each Guard and Reserve component shall be submitted each year to the ASD(MRA&L) by each Military Department. Programs shall be submitted no later than October 1 (or earlier as called for) in order to be in accord with annual legislative and budgetary schedules. In turn, prior to the Congressional hearings on the Guard and Reserve Forces Military Construction Authorization and Appropriation Bill, the Office of the ASD(MRA&L) will prepare a listing of projects alphabetically by State based on the annual Service submissions and furnish them to the Armed Services Committees and to each of the Military Departments. When it becomes necessary to delete, postpone or add projects to the respective lists, established reprograming procedures and prior approval must be obtained before funds for the projects can be obligated.

(2) *Requirements.* As a basis for the annual reexamination of the total requirements for training facilities, the total of the authorized strengths (§ 246.7(c)) for all units and/or locations of each Guard/Reserve Component may not exceed 110 percent of the total of Selected Reserves who use the facility. The added 10 percent is intended to provide a reasonable

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

degree of flexibility in the overall planning of the utilization of these facilities. It is not intended to be used for the express purpose of either increasing the allowable size of a specific facility or creating a requirement for the purchase or construction of a facility at an otherwise ineligible location.

(3) *Method of acquisition of Guard and Reserve Forces facilities.* In fulfilling facilities requirements, the following methods shall be considered in the sequence listed and shall be used by the State Guard/Reserve Forces Facilities Boards in accordance with DoD Directive 5126.24,[1] "Duties and Responsibilities of State Guard/Reserve Forces Facilities Boards," August 1, 1973. The acquisition of new facilities and the expansion, repair, or replacement of existing facilities shall be determined by the most cost-effective method. When appropriate, economic analyses and program evaluations of Guard/Reserve Forces facilities requirements shall be made in accordance with DoD Instruction 7041.3,[1] "Economic Analysis and Program Evaluation for Resource Management," October 18, 1972, and shall be included as part of the resource justification:

(i) Full utilization of existing, partially used facilities, including those of the other Guard/Reserve components and the active Armed Forces in accordance with DoD Directive 4165.6,[1] "Real Property Acquisition, Management and Disposal," December 22, 1976.

(ii) Utilization of real property that is excess to the needs of any of the Military Departments or other Federal agencies, by transfer, use agreement, or permit.

(iii) Lease or donation of privately or publicly owned property that can fulfill the need, or be modified at reasonable cost to meet the requirement.

(iv) Construction of additions to existing facilities for the Guard/Reserve components or Active Forces, or on property already controlled by them, with provision for maximum joint or common use of existing space and facilities.

(v) Purchase of existing real property suitable for the purpose without uneconomical remodeling or renovation.

(vi) Construction of a new facility by two or more Guard/Reserve components as a joint venture. If such construction at a single location cannot be accomplished concurrently, because of an unreconcilable disparity in priorities or for other cogent reasons, provision will be made in the design and siting of the initial structure for future expansion.

(vii) Unilateral construction of a new facility by a single Guard/Reserve component only when all of the other methods have been carefully reviewed and found impractical or uneconomical by a State Guard/Reserve Forces Facilities Board.

(4) *Joint facilities.* (i) The Military Departments shall accomplish joint acquisition and/or joint use of facilities to the fullest extent and, for each proposed facility that is not proposed for joint acquisition and/or joint use, furnish factual justification to support their conslusion that joint facilities are not practicable.

(ii) Military Department programs will be coordinated at the departmental level to determine the joint acquisition/use aspects prior to submission to the ASD(MRA&L).

(iii) As a general principle, the host Service (the Military Service having the majority interest in the facility) shall program all costs for acquisition to meet its own minimum requirements.

(iv) The tenant Service (the Military Service having a minority interest in the facility) shall program all costs for acquisition, as well as any additional utilities and mechanical service, that are excess to the host Service requirements.

(v) Within the provisions of DoD Directive 5100.10,[1] "Delegation of Authority With Respect to Reserve Forces Facilities," March 16, 1972, the ASD(MRA&L) or a designee may require those adjustments in project priorities and scope, host/tenant relationships, and the sharing of project costs that is considered to be essential for the fullest use of the facilities.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention Code 301.

(vi) At a multi-use activity (i.e., an installation where more than one Guard or Reserve component is located, or where the Guard and Reserves are collocated with an Active Component), unilateral construction will not be authorized for any project in the category codes of 400 (Supply Facilities), 500 (Hospital and Medical), and 700 (Housing and Community Facilities) unless supporting documentation clearly indicates that joint utilization or modification of any existing structure is impractical or uneconomical. For any project within these category codes (DoD Instruction 4165.3,[1] "Department of Defense Facility Classes and Construction Categories," September 1, 1972), supporting documentation will indicate whether or not there is a similar facility at the installations.

(c) *Planning procedures.* (1) Armory and nonarmory projects will be consolidated at a single location whenever possible.

(2) Facilities required for equal or principal use of the Active Forces will be programed by the Active Forces. The ASD(MRA&L) or a designee may grant exceptions to this general policy on a specific case basis for those installations where a Guard/Reserve component has been designated as the host Service.

(3) Facilities required for sole or principal use of the Guard/Reserve components will be programed by the Guard/Reserve components.

(4) When the ASD(MRA&L) or a designee determines that the expansion, rehabilitation, or conversion of existing armory facilities is necessary, due to the Federally-directed conversion, redesignation, or reorganization of U.S. Army or Air National Guard units, the Federal contributions to the States, Puerto Rico, Guam, Virgin Islands, and the District of Columbia may be at 100 percent of the cost involved (10 U.S.C. 2233(a)(3)).

(5) The size of each facility to be constructed shall be based upon current authorized strength in units and/or individuals, together with the quantity and type of equipment and supplies required for proper training at the facility, and in consonance with space and facilities criteria approved or established by the ASD(MRA&L) or a designee (DoD Manual 4270.1-M, "Construction Criteria," June 1, 1978 (Advance Edition)). Facilities for Guard/Reserve component use that are acquired by other means than construction shall adhere to the same criteria as closely as possible, consistent with the physical characteristics of existing structures.

(6) When it becomes necessary for the active military forces to displace or relocate permanently housed units or activities of the Guard/Reserve components that are not mobilized, the regular military forces shall provide replacement facilities equal to those from which the units or activities are removed. In such instances, the Chief of the Guard/Reserve components or other tenant unit(s) concerned must be consulted, their relocation requirements considered, and suitable alternatives developed prior to displacement or relocation action. The replacement facilities must (i) be acceptable to the Chief of the Guard/Reserve component of the unit being displaced, and (ii) meet approved space requirements, including storage, so as not to impede the execution of training programs. The term "acceptable" applies to the timely availability of the replacement facilities to ensure they meet the occupying units' routine readiness and training requirements. In the event new construction or major repair is required as a direct result of the dislocation/relocation, Guard/Reserve construction funds will not be authorized for project accomplishment. The foregoing provisions shall not apply when a tenant unit is displaced or relocated after using space on a temporary or interim basis pending the acquisition of exclusive or sole-use space.

(7) During the process of excessing land or facilities that were constructed under a Guard/Reserve military construction authorization program and that are no longer required by the Guard/Reserve component, other Guard/Reserve components will be screened to determine their needs for such resources before notifying the active Services of their availability.

Army National Guard facilities constructed on State land will not be reported to the active services for availability.

(8) For each annual program, the Military Construction Program Books will address succinctly the relationship of the facilities requested to the achievement of operational readiness for each component of the Guard and Reserve forces.

(9) All annual authorization program books submitted for OSD budget review and subsequent Congressional submission will contain the information shown in § 246.8 as part of the preface of the book, with any exceptions noted on the individual project DD 1391 or DD 1391c justification document. This information will be forwarded over the signature of the official having final departmental authority for approving Guard/Reserve facilities construction projects.

(10) For all projects involving land acquisition, a site survey must be conducted prior to commencement of design. The survey will include necessary subsurface explorations and will be sufficiently thorough to make reasonably certain the site and soil conditions are such that the facility can be designed using normal engineering practices, and can be constructed within programed funds. The results of the survey will be documented in a site survey report, which will be utilized as a major consideration in the site selection process. It is not necessary to submit this report to ASD(MRA&L), but a survey and report will be made for all projects involving site acquisition and will be available upon request.

(11) Land acquisition under the Guard and Reserve title of the Annual Military Construction Authorization Act must be reported to the Congress pursuant to 10 U.S.C. 2662 if the value of the fee exceeds $50,000. Prior approval of such acquisition by the ASD(MRA&L) or a designee is required by DoD Instruction 4165.12,[1] "Prior Approval of Real Property Actions," July 23, 1973.

(d) *Armory Projects.* (1) Armories shall be fully utilized consistent with preservation of unit integrity. Training at multiple-unit locations should be spread over a period of 4 nights per week, or 4 weekends per month, where local conditions and efficient administration of the training program make this practicable and economical.

(2) In planning its Guard and Reserve program, each Military Department shall establish an authorized strength for each existing and/or programed facility. These facilities requirements at any location will be based upon the authorized strength as specifed in DoD Manual 4270.1-M.

(3) Armories will not be acquired by purchase nor will Congressional notification be initiated for armory construction at Federal expense at any location where Guard/Reserve Component has an *actual* strength of less than 55, or where there is a combined (joint) *actual* strength of less than 100. Requirements for units of lesser strength will be justified on an individual basis under the provisions § 246.6.

(e) *Nonarmory Projects.* Administrative and logistics support facilities will be consolidated with training support facilities whenever possible.

(f) *Design and Types of Construction.* (1) Proposed definitive drawings, specifications, space criteria, and construction standards shall be devised and submitted for the approval of the ASD(MRA&L) or a designee prior to their acceptance as criteria and standards. After approval, they shall be used to the maximum extent. Similarly, exceptions to approved criteria and construction standards shall be submitted for prior approval.

(2) New facilities for the Guard/Reserve components will be designed in accordance with DoD Manual 4270.1-M. In the design of new facilities, maximum use will be made of energy conservation techniques to conserve critical fuels and energy resources.

(3) For each project proposed to replace an existing facility, whether the project is initially submitted as part of an annual authorization/budget program, or, subsequently, within available funded lump sum authorization,

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa 19120 Attention Code 301.

the supporting justification data shall include:

(i) A full description of the existing facility, including (A) date constructed, (B) type of construction, (C) physical condition of the essential elements of the facility, and (D) ultimate disposition of the structure. Project sponsors are encouraged to include photographs that illustrate the conditions described.

(ii) Approximate expenditures for improvements or additions to the facility during the 2-year period preceding current submission of the project, and for day-to-day maintenance and repairs during the same period.

(iii) An economic analysis must be available, clearly depicting the value of replacing rather than repairing, existing facilities. For those replacement projects where it would be a waste of resources to consider obviously impractical alterations, the formal economic analysis is not required; but the requested project must reflect an explicit foregone conclusion.

(g) *Site Plans or Master Plans.* For all projects other than single facilities at a location, such as armories and centers, one copy of the site plan or master plan of the installation, clearly depicting the proposed project(s) in relation to existing and projected facilities, shall be submitted with the initial proposal. Where Guard/Reserve components of more than one Military Service are located at an installation, each requested project will be sited in accordance with an approved interservice master plan that indicates maximum joint use of all facilities.

[44 FR 11774, Mar. 2, 1979, as amended at 45 FR 46806, July 11, 1980]

§ 246.4 Minor construction, repair, and restoration-of-damage projects.

(a) *Minor Construction.* (1) The term "minor construction" shall be applied to all Guard/Reserve Forces construction projects that do not exceed $175,000 in cost (except those included in omnibus projects, such as pollution abatement and the energy conservation investment program). Such projects are to be accomplished using available funds specifically identified as minor construction in the approval annual budgets for Military Construction, Guard and Reserve Forces or using appropriations available for Operations and Maintenance, as described in § 246.4(a)(2). Previously approved minor construction projects become invalid as such when the estimated cost exceeds $175,000 and must be resubmitted for approval as military construction projects, using available lump sum authorization. Essential projects not exceeding $50,000 in cost may be accomplished from funds available for Maintenance and Operations of installations under the provisions of 10 U.S.C. 2233a(2) or from the minor construction appropriation. Projects within these categories must not exceed applicable established criteria or consist of repetitive types of facilities for which the criteria as provided in § 246.3(f) have not been established. The justification of minor construction projects submitted to the Secretary of a Military Department or a designee, shall provide the same technical information and cost data required for major construction projects, together with the required affirmation of the nonavailability of existing facilities capable of fulfilling the requirements. For each project that is $25,000 or less, the Secretary of the Military Department concerned or a designee may establish appropriate justification data. The Secretary of a Military Department of a designee shall approve all minor construction projects.

(b) *Restoration-of-damage projects.* Restoration-of-damage projects are special types of repair or reconstruction projects resulting from sudden unexpected major damage. Due to the urgency of the requirement, execution must be accomplished in the most expeditious manner. Accordingly, restoration-of-damage projects may be funded with Operations and Maintenance, Major or Minor Construction funds. Approval authority will be in accordance with that required for normal repair or construction projects funded under the selected fund source. The justification for restoration-of-damage projects shall include statements that:

(1) The projects are, in fact, restorations or replacements of facilities that have been damaged.

(2) The scope is the minimum to satisfy current and projected missions.

(3) The quality of construction proposed is comparable with that originally damaged or destroyed; allowing, however, for improved materials and equipment, to conform with current design practice and to minimize the possibility of future damage.

(4) The quantitative and qualitative criteria is in accordance with § 246.3(f).

(c) *Approved facilities.* (1) Subject to the financial limitation otherwise prescribed, projects listed under § 246.4(a) and (b) that do not require prior approval by the ASD(MRA&L) are considered to become "approved facilities," within the purview of III. C., DoD Directive 5100.10,[1] at the time the projects are authorized by the Secretary of the Military Department concerned or a designee, provided each project authorization includes a determination that the project does not involve a change in the number of units or reduce the joint-utilization potential of a facility in contravention of 10 U.S.C. 2234.

(2) Any project for which this determination cannot be made at the Military Department level shall be submitted to the ASD(MRA&L) or a designee.

(d) *Repair projects*—(1) *General.* Projects for the repair of facilities, as defined in DoD Directive 7040.2[1] normally shall be accomplished with funds appropriated for Operations and Maintenance. The requests for project approval shall be submitted in accordance with policies and procedures established by the Secretary of the Military Department concerned with sufficient justification provided. The justification shall include similar technical and cost data to validate the requirement as is required for major construction projects.

(2) *Approval Authority.* The Secretary of the Military Department concerned or a designee shall approve, in advance of the undertaking, those repair projects exceeding $400,000 and those repair projects in which the repair cost is in excess of $75,000 and is 50 percent or higher of the replacement cost of the facility. This authority may not be redelegated; however, the Secretary may redelegate approval authority for all other repair projects.

[44 FR 11774, Mar. 2, 1979, as amended at 45 FR 46806, July 11, 1980]

§ 246.5 Reporting.

(a) A semiannual status report is required for each Guard/Reserve component facilities program.

(b) The semiannual status report of projects approved for funding within the lump sum authorization provided by the annual Guard/Reserve Forces Facilities Authorization Acts (FY 1963 forward) shall be prepared on DD Form 1405 (Enclosure 1) and covered by a summary on format A (Enclosure 2), in accordance with the accompanying instructions. Projects are to be cited in the report from the time of approval until financially complete. Three copies of each report shall be submitted to the ASD(MRA&L) or a designee no later than 60 days after the close of the second and fourth quarters covered by the report. This report does not constitute the request for approval of an increase exceeding 25 percent in the approved project costs, as required by § 246.3(a)(2)(vi).

(c) When approved, a copy of each repair project in excess of $400,000 or $75,000 and 50 percent or greater of the replacement cost, with supporting project justification, shall be furnished to the ASD(MRA&L).

§ 246.6 Exceptions.

The ASD(MRA&L) or a designee may grant exceptions to the provisions of this part when the Military Departments conclusively demonstrate the exceptions to be essential.

§ 246.7 Definitions.

(a) *Facility.* Includes any (*i*) interest in the land or real property, (*ii*) armory or other structure, and (*iii*) storage or other facility normally needed for the administration and training of any unit of the Guard and Reserve components of the Armed Forces.

(1) *Armory.* A primary structure that houses one or more units of a Guard/

---

[1] See footnote 1 to § 246.3.

Reserve component and is used for unit training and administration; includes any appurtenant structure housing equipment used for the unit's training and administration. For the purpose of this Directive, the term is restricted to a facility designed for home station training. The Military Departments may use their customary terminology; e.g., National Guard Armory, Army Reserve Center, Naval and/or Marine Corps Reserve Center, etc. When occupied by Guard/Reserve components of more than one Military Department a facility shall be known as an "Armed Forces Reserve Center."

(2) *Nonarmory facility*—(i) *Administrative and Logistics Support Facility.* A field maintenance shop, warehouse, office, and other such structures.

(ii) *Training support facility.* Training sites, ranges, and other related facilities.

(b) *Reserve structure.* As authorized by the Secretary of Defense, the organization of a Guard/Reserve component with a manning level of participating personnel in paid status, planned to meet mobilization requirements and approved by the Secretary of the Military Department concerned.

(c) *Authorized strength.* The planned manning level approved by the Secretary of the Military Department concerned, of personnel in the Selected Reserve, as defined in DoD Directive 1215.6 (32 CFR Part 102).

(d) *Program.* A plan for the acquisition of additional facilities and/or replacement of existing facilities by purchase, transfer, and construction, and for their expansion, rehabilitation, conversion, and equipping.

(1) *Long-range program.* A program that: Is correlated and in consonance with the latest approved update of the Five-Year Defense Program, DoD Instruction 7045.7,[1] "The Planning, Programming, and Budgeting System," October 29, 1969; is composed of projects by location, type and size of facility, and estimated cost; and indicates all foreseeable requirements for which it is contemplated that authorization will be requested in the annual program of each of the five succeeding fiscal years. The projects are listed alphabetically by State and location preceded by a summary page showing the numbers of projects and the aggregate estimated costs for each year of the 5-year program period, plus the residual no-year increment.

(2) *Annual program.* A single fiscal year increment of the long-range program, supported by justification data as specified on DD Forms 1390S, 1391 and 1391c, and by the certifications shown at enclosure 5 and those required by DoD Directive 1200.1 (32 CFR Part 67).

(e) *Approved project.* A project funded from the lump sum authorization is considered to be approved if the Congress does not disapprove it within 30 days after notification by the ASD(MRA&L) or a designee of intent to construct it.

(f) *Land acquisition.* Land required for any construction project that is acquired through fee, lease, donation, exchange, permit or license.

---

[1] See footnote 1 to § 246.3

ENCLOSURE 1

DEPARTMENT OF DEFENSE RESERVE FORCES FACILITIES STATUS REPORT OF MAJOR CONSTRUCTION PROGRAM				RESERVE COMPONENT		FOR THE PERIOD			REPORT CONTROL SYMBOL
INSTALLATION AND LOCATION	PROJECT DESCRIPTION	DATE APPROVED	COST AUTHORIZED	CONTRACT AWARD DATE		COMPLETION DATE		COST AT COMPLETION OR C.W.E	REMARKS
				SCHED	ACTUAL	SCHED	ACTUAL		
a	b	c	d	e	f	g	h	i	j

DD FORM 1405 REPLACES EDITION OF 1 NOV 62 WHICH IS OBSOLETE 3721 PAGE ___ OF ___ PAGES

ENCLOSURE 1 INSTRUCTIONS

General. All projects approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), for which Congressional notification has been completed, as well as projects approved by other competent authority within lump sum authorizations contained in annual Guard and Reserve Forces Facilities Authorization Acts, shall be included in this report, from the quarter in which they are approved to the quarter in which they are reported as financial completed. For approved projects canceled or withdrawn from the program during a reporting period, complete entries in columns a, b, c and d and enter appropriate notations under "Remarks", column j. Entries shall be arranged alphabetically by States and by location, in accordance with the following guidance.

Column a. Enter name of State, and, under it, identify facility and location, e.g., NG Armory Beloit, NAS Willow Grove, Springfield MAP. Initials and and abbreviations commonly applied in the specific program area may be used. For items authorized under a "Various Locations" heading in the Major Construction Program, enter data in appropriate alphabetical geographic location and place note under "Remarks," column j, "Var Locs Item."

Column b. Enter brief description of project or facility items as shown in item 7, column b of DD Form 1390s, "FY 19—— Guard and Reserve Military Construction Program." For a location having more than one item, list in chronological order of approval dates entered in column c of this form.

Column c. Enter date project was approved by authority responsible for final approval, plus an asterisk if approval was by other than the Congress. Usually this will be 30 days after initiation of Congressional notification.

Column d. Enter estimated cost of project or facility item as approved. If an increase in estimated cost exceeding 25% was approved after the initial project approval, enter a note under "Remarks," column j, "Auth. Cost Increase to $——— approved (date)."

Column e, f, g, h. Self-explanatory, show dates only by month and year (e.g., 10/67).

Column i. Enter cost, to nearest dollar, at time of financial completion (exclude architect-engineer design costs), or current working estimate (CWE) if not yet financially completed.

Column j. Enter any appropriate notation needed to explain or clarify an entry under another column, to incidate the true status of the project. Particularly, when beneficial occupancy of a facility was attained during a reporting period but the item is not reportable as financially completed, enter "BOD (month and year)." If project is being reported 100% completed, enter note "Financially Complete."

ENCLOSURE 2

RESERVE COMPONENT ———————————

Report Control Symbol DD-M (SA) 802

DEPARTMENT OF DEFENSE GUARD/RESERVE FORCES FACILITIES

SUMMARY OF AUTHORIZATION STATUS OF MAJOR CONSTRUCTION PROGRAM REPORTED ON ATTACHED DD FORM 1405 FOR THE PERIOD ——————————

(a) Cumulative total of lump sum authorization from Pub. L. 87-554 to Pub. L. ——— inclusive. $
(b) Total reported financially completed *this* period (cost at completion) .... $
(c) Cumulative total reported completed end of last period .... $

(d) New cumulative total completed end of this period (b) + (c) .... $
(e) Total of approved but uncompleted projects end of *this* period (C.W.E.) .... $
(f) Total of cumulative lump sum authorization committed to projects (d) + (e). $

(g) Balance of cumulative authorization uncommitted (a) - (f) .... $

INSTRUCTIONS

GENERAL. The DD Form 1405 is designed to provide a semiannual record of status of Guard/Reserve facilities projects accomplished within the lump sum authorizations provided annually for this program in the Military Construction Authorization Acts. This "Format A" is designed to provide for record purposes a summary of the committed amounts of such authorization, reported by project on the DD Form 1405, and the remaining uncommitted amount for use in connection with submission of the project notifications to the Congress as required by 10 U.S.C. 2233a(1). It is imperative, therefore, that this reporting be both complete and accurate.

SPECIFIC. Lines (a) through (g) are self-explanatory and shall reflect all approved projects chargeable to the lump sum authorizations provided by the annual Military Construction Authorization Acts beginning with Title VII of Pub. L. 87-554.

ENCLOSURE 3

PREFACE TO MILITARY CONSTRUCTION PROGRAM BOOKS (GUARD/RESERVE COMPONENT) FISCAL YEAR MILITARY CONSTRUCTION PROGRAM

A. *Environmental Protection, Pub. L. 91-190.* All projects in the (Guard/Reserve Component) FY   Military Construction Program have been addressed for potential significant environmental impact in accordance with section 102(2)(c) of the National Environmental Policy Act, and it has been determined that the proposed projects will not have a significant impact on the environment nor are they highly controversial, except   (see DoD Directive 6050.1, "Environmental Considerations in DoD Actions," March 19, 1974 for guidance on the preparation of Environmental Impact Statements).

B. *Floodplains and Wetlands.* Projects have been evaluated for conformance with Executive Orders 11988 and 11990 and none are sited in floodplains or wetlands except   (for any projects sited in floodplains or wetlands the circumstances will be fully explained in accordance with paragraph 4-10 of DoD Manual 4270.1-M and full compliance with the provisions of that paragraph will be indicated on the individual project Form DD 1391).

C. *Consideration of Alternative Facilities.* All existing facilities have been considered for potential use to fill these requirements and no suitable space is available.

D. *National Historic Preservation Act of 1966.* Real estate on which facilities are to be constructed do not appear in the National Register of Historic Places except

E. *Reserve Manpower Potential.* The reserve manpower potential to meet and maintain authorized strengths of all Guard/Reserve flying/nonflying units in the areas in which these facilities are to be located has been reviewed in accordance with the procedures described in subsection IV.A. of DoD Directive 1200.1 (32 CFR Part 67). In coordination with the other Military Services, it has been determined that the number of Guard/Reserve flying/nonflying units presently located in these areas and allocated for future activation is not and will not be larger than can be maintained at authorized strength, by all reasonable expectations. This determination is based on the number of persons living in the areas who are qualified for membership in those Guard/Reserve units.

F. *Fallout Protection.* In accordance with Section 610 of Pub. L. 89-568, as amended, and DoD Directive 3020.35, "Development, Use, Marketing and Stocking of Fallout Shelters," July 31, 1972, military construction facilities in this program have been designed to afford maximum fallout protection. Fallout shelters have been excluded only for the following reasons: (See DoD Directive 5100.50, "Protection and Enhancement of Environmental Quality," May 24, 1973, for applicable exceptions.)

G. *Pollution Abatement.* The design of proposed military construction projects includes, where appropriate, the provision of facilities for air and water pollution control in accordance with Executive Order No. 11752 and DoD Directive 5100.50. Military construction projects proposed primarily for abatement of existing pollution problems at (Guard/Reserve component) installations have been reviewed for air and water pollution abatement by the Environmental Protection Agency. Each project is designed to correct an existing pollution problem in accordance with specific requirements.

H. *Design for Accessibility of Physically Handicapped Personnel.* In accordance with Pub. L. 90-480, provisions for physically handicapped personnel will be provided for, where appropriate, in the design of facilities included in this program. (See Paragraph 5-6, DoD Manual 4270.1-M for requirements for accessibility and for information required on individual project Form DD 1391.)

I. *Vending Facilities for the Blind.* Projects have been evaluated for the provision of vending facilities to be operated by blind persons in compliance with DoD Directive 1125.3 (32 CFR Part 269) and satisfactory sites for the operation of vending facilities will be provided where required by that

J. *Energy Conservation.* Any proposed projects specifically for energy conservation at (Guard/Reserve component) installations have been developed, reviewed, and selected for early economic payoff and maximum reduction of energy consumption. Projects include improvement to existing facilities and utilities systems to upgrade design, eliminate waste, and install energy-saving devices. Criteria for all new facility construction in the (Guard/Reserve Component) Military Construction Program requires that the design, materials, and operational facilities provide for maximum reduction of energy consumption.

(Signature of Guard/Reserve official having final responsibility for approving construction projects.)

PART 247—STANDARD RATES FOR UNOFFICIAL TELEPHONE SERVICE AT DoD ACTIVITIES

Sec.
247.1 Purpose.
247.2 Applicability and scope.

See footnote 2 to § 246.3.

Sec.
247.3 Class of defense telephone service.
247.4 Schedule of rates.
247.5 Procedures.

AUTHORITY: 80 Stat. 379, 65 Stat. 290, 5 U.S.C. 301, 31 U.S.C. 483a.

SOURCE: 32 FR 15019, Oct. 31, 1967, unless otherwise noted.

§ 247.1 Purpose.

This part implements DoD Directive 4640.3, March 4, 1967, and Part 288 of this title and establishes standard rates and procedures relating to the furnishing of official DoD telephone service by DoD components to unofficial purchasers within, or in the immediate vicinity of DoD activities.

§ 247.2 Applicability and scope.

The provisions of this part apply to the military departments and Defense agencies referred to (in this part collectively as "DoD components") and to all DoD installations or activities (worldwide).

§ 247.3 Class of defense telephone service.

(a) Telephones installed on DoD installations and connected to a DoD switchboard are designated as follows:

(1) *Class A (Official).* Telephones which are authorized for the transaction of official business of the Government on DoD installations and require access to commercial telephone company central office and toll trunks for the proper conduct of official business.

(2) *Class B (Unofficial).* Telephones which are installed within, or in the immediate vicinity of DoD activities and are connected to DoD switchboards for unofficial use are further designated as follows:

(i) B-1 telephones installed in Government owned or leased quarters assigned for family or personal use in lieu of basic allowance for quarters and located within, or in the immediate vicinity of a DoD activity.

(ii) B-2 telephones installed for the use of public schools, the American Red Cross and other quasi-Government agencies such as the Service Motion Picture Services, Service Exchanges, Federal Credit Unions, and NCO and Officers' Messes located on a DoD installation.

(iii) B-3 telephones installed for commercial contractors, concessionaires and other business firms operating within, or in the immediate vicinity of a DoD activity.

(iv) B-4 telephones installed in private or rental housing located within, or in the immediate vicinity of a DoD activity.

(v) When either party line service or restricted service that does not have access to central office and toll trunks is provided, such service may appear as a subdesignation of the above listed classes of unofficial telephone service.

(3) *Class C (Official-Restricted).* Telephones which are authorized for the transaction of official business of the Government on a DoD installation without access to telephone company central office or toll trunks.

(4) *Class D (Official-Special).* Telephones installed on a DoD installation for official business of the Government and restricted to special classes of service such as fire alarm, guard alarm, and crash alarm.

§ 247.4 Schedule of rates.

(a) The following schedule of joint flat monthly rates for the provision of unofficial telephone service by DoD activities is hereby established:

(1) Class B-1—$5.75; Class B-2—$10.00; Class B-3—$13.00, and Class B-4—$5.75.

(2) Two-party line service—75 percent of the monthly charge for the basic service.

(3) Four-party line service—50 percent of the monthly charge for the basic service.

(4) Restricted service (not having access to central office or toll trunks)—75 percent of the monthly charge for the basic service.

(5) Party line restricted service, where provided—75 percent of the charge computed under paragraphs (a)(2) and (3) of this section.

(b) The additional charge for a PBX bridged extension shall be the same as the commercial charge to the Government, or $1.25, whichever is the great-

---

Copies available from the Office of Management and Budget (Publications) New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

er. This rate applies for all classes of unofficial service.

(c) Recurring and nonrecurring charges for special and miscellaneous equipment provided a purchaser, for which flat rates have not been established, will be charged to the purchaser at the prevailing local commercial rate for similar service.

(d) The flat monthly rates for unofficial telephone service are applicable whether the communication company furnished flat or measured service. The flat rates herein established will entitle the purchaser to make local calls for which the basic rate is one message unit.

(e) Where Government-owned quarters are occupied by employees of contractors operating Government-owned plants, and unofficial telephone service is provided from a DoD switchboard, Class B-1 service will be provided in accordance with rates prescribed hereon.

§ 247.5 Procedures.

(a) *Charges for unofficial telephone service.* (1) The Department of Defense considers as official only such telephone service as properly pertains to Government business. Telephone service provided by a DoD activity, and used for personal or unofficial purposes whether the facilities are Government owned or leased, under a written contract or implied agreement with a commercial communication company, shall be charged for in accordance with the rate schedules established in this Instruction.

(2) Responsibility for payment of all charges incident to unofficial use of telephone service provided from a DoD switchboard shall be assumed by the purchaser. Charges for extensions, special or miscellaneous equipment and installation costs thereof, and toll call and telephone charges when incurred, are to be added to the basic monthly rate. Taxes will be assessed as applicable.

(3) Advance payment or a deposit may be required at the option of each DoD component.

(4) All flat-rate charges will be billed to purchasers on the first regular monthly bill following incurrence of the charge. The responsibility for billing, the provision of internal controls and the accounting for unofficial telephone service furnished to purchasers is placed on the Secretary or Director of the respective DoD component.

(5) When a purchaser has received service for only a fractional part of the billing period, the monthly charge will be prorated. Tables of fractional charges and credits may be used to determine the amount of the prorated charge.

(b) *Wherry housing.* Provision of telephone service to Wherry housing located within, or in the immediate vicinity of a DoD activity will be in accordance with the procedures of subsection III. A of DoD Directive 4640.3 and at the rates established herein.

(c) *Public schools.* Where unofficial telephone service is provided to public schools on DoD installations, the permittee or lessee will reimburse the Government in accordance with the rates herein established.

(d) *Rental or private housing.* In the case of rental or private housing the charges will be in accordance with the rates herein established.

(e) *Public quarters.* Unofficial telephone service furnished to the occupants of public housing will be charged for in accordance with the rates herein established.

PART 248—DEPARTMENT OF DEFENSE PERIODICALS

Sec.
248.1 Purpose.
248.2 Applicability and scope.
248.3 Definitions.
248.4 Policy.
248.5 Authorities and responsibilities.
248.6 Funding.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 43 FR 8137, Feb. 28, 1978, unless otherwise noted.

§ 248.1 Purpose.

This part established Department of Defense policies, criteria, and controls that govern the publication of DoD periodicals.

§ 248.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies, hereafter referred to as "DoD Components."

(b) This Directive does not encompass Armed Forces newspapers and civilian enterprise publications as defined in 32 CFR Part 202; manuals, pamphlets, directives, instructions, regulations, opinions, decisions, official notices, circulars, reports, internal information bulletins issued by a DoD Component headquarters; and primarily (75 percent or more) statistical materials.

§ 248.3 Definitions.

(a) Periodicals within the purview of this part are: Any classified or unclassified DoD magazine or newsletter-type publication published at regular intervals, at least semiannually, for the purpose of disseminating information and material necessary to the issuing activity, with a continuing policy as to format, content, and purpose. Periodicals are nondirective in nature and are usually published to inform and motivate DoD personnel, increase their knowledge, or improve their performance.

(b) Classes of periodicals are: (1) Class I: Total annual cost is $20,000, or more.

(2) Class II: Total annual cost is less than $20,000, but more than $5,000.

(3) Class III: Total annual cost is $5,000, or less.

(c) The term "DoD personnel" refers to military and civilian members of the DoD Components.

§ 248.4 Policy.

(a) *General.* (1) Each DoD Component proposing to publish a DoD periodical shall conduct an evaluation to determine whether or nor the periodical should be established. The determination should be based on the following:

(i) The periodical must serve a clearly defined purpose in support of the mission of the publishing DoD Component.

(ii) The purpose to be served must justify the cost.

(iii) High standards of editorial quality, accuracy, and good taste must be maintained.

(iv) A periodical is the necessary medium of communication between the publishing activity and its intended readership.

(v) Equivalent periodicals serving the same, or substantially the same, purpose do not exist.

(vi) The potential readership can be specified clearly.

(vii) The periodical can be distributed efficiently and economically to the intended readership.

(viii) The nature, amount, and assured sources of information to be disseminated justify the foremat, production, specifications, and frequency of issue.

(ix) Adequate resources are available to produce the periodical.

Current or estimated costs are consistent with the periodical's objectives.

(x) The periodical has current applicability and is consonant with existing law and DoD policies.

(2) All personnel responsible for publishing DoD periodicals shall comply with the provisions of the current edition of the Government Printing and Binding Regulations[1] and OMB Circular No. A-3.[2]

(3) DoD periodicals shall not carry partisan political compaign articles, editorials, or advertisement.

(4) No appropriated or nonappropriated funds may be used to defray publishing costs of a non-DoD periodical published by a private firm, corporation, individual, or organization.

(5) DoD personnel may not be assigned to serve on the editorial, production, or business staffs of a non-DoD periodical that is published by a private firm, corporation, individual, or organization.

(6) Editors of DoD periodicals will conform to applicable regulations, laws involving libel and copyright, and postal regulations.

---

[1] Copies available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[2] Copies available from the Office of Management and Budget (Publications) New Executive Office building, 726 Jackson Place NW., Washington, D.C. 20503.

(7) Dissemination of DoD statistical information in any periodical shall comply with the provisions of DoD Directive 5000.20.[3]

(b) *Elimination of duplication.* (1) To eliminate duplication, periodicals dealing with common subject areas shall be published along DoD-wide functional lines, rather than individual Component lines.

(2) No DoD Component shall be required to contribute to a consolidated common-use periodical more of its resources than it expends in publishing a related single-Component periodical.

§ 248.5 Authorities and responsibilities.

(a) *The Assistant Secretary of Defense (Public Affairs)* shall:

(1) Establish, and ensure compliance with, supplemental policies, standards, and controls governing the publication of DoD periodicals.

(2) Evaluate the effectiveness of DoD Component policies, standards, and controls that relate to DoD periodicals, and effect such changes as may be warranted.

(3) Institute programs, in conjunction with the DoD Components, for the purpose of increasing the proficiency of editorial personnel in editorial writing, periodical production, management, and cost effectiveness.

(4) Establish a research resource to:

(i) Provide professional guidance to DoD Components in the conduct of mass communications research.

(ii) Evaluate completed research.

(iii) Coordinate periodical research within the DoD Components.

(5) In coordination with the DoD Components concerned, examine the apparent duplication of periodicals and direct the elimination of those found to be duplicative or of marginal value. (See § 248.4(b).)

(b) *The Head of each DoD Component* shall designate an office to monitor the Component's internal periodicals, and:

(1) Conduct a coordinated review of its standards for publication, distribution, evaluation, review and approval;

(2) Maintain a current inventory of its periodicals; and

(3) Submit such reports as may be required by the ASD(PA).

§ 248.6 Funding.

DoD periodicals will be financed within available appropriated or nonappropriated funds and will be produced as economically as possible, consistent with the need for efficient communication (See DoD Instruction 7041.3.[1]) Funding will be in accordance with established management practices of the DoD Component concerned.

PART 250—WITHHOLDING OF UNCLASSIFIED TECHNICAL DATA FROM PUBLIC DISCLOSURE

Sec.

250.1 Purpose.
250.2 Applicability and scope.
250.3 Definitions.
250.4 Policy.
250.5 Procedures.
250.6 Responsibilities.
250.7 Pertinent portions of Export Administration Regulations (EAR).
250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).
250.9 Notice to accompany the Dissemination of export-controlled technical data.

AUTHORITY: Sec. 1217, Pub. L. 98-94, (10 U.S.C. 140c).

SOURCE: 49 FR 48041, Dec. 10, 1984, unless otherwise noted.

§ 250.1 Purpose.

This part establishes policy, prescribes procedures, and assigns responsibilities for the dissemination and withholding of technical data.

§ 250.2 Applicability and scope.

(a) This part applies to:

(1) All unclassified technical data with military or space application in the possession of, or under the control of, a DoD Component which may not be exported lawfully without an approval, authorization, or license under E.O. 12470 or the Arms Export Con-

---

[3] Filed as part of original. Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention: Code 301.

[1] See footnote 1 to § 248.4(a)(2).

trol Act. However, the application of this Part is limited only to such technical data that disclose critical technology with military or space application. The release of other technical data shall be accomplished in accordance with DoD Instruction 5200.21 and DoD 5400.7-R.

(2) The Office of the Secretary of Defense (OSD) and activities support adminstratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to collectively as "DoD Components").

(b) This part does not:

(1) Modify or supplant the regulations promulgated under E.O. 12470 or the Arms Export Control Act governing the export of technical data, that is, 15 CFR Part 379 of the Export Administration Regulations (EAR) and 22 CFR Part 125 of the International Traffic in Arms Regulations (ITAR).

(2) Introduce any additional controls on the dissemination of technical data by private enterprises or individuals beyond those specified by export control laws and regulations or in contracts or other mutual agreements, including certifications made pursuant to § 250.3 (a). Accordingly, the mere fact that the Department of Defense may possess such data does not in itself provide a basis for control of such data pursuant to this Part.

(3) Introduce any controls on the dissemination of scientific, educational, or other data that qualify for General License GTDA under 15 CFR 379.3 of the EAR (see § 250.7) or for general exemptions under 22 CFR 125.11 of the ITAR (see § 250.8).

(4) Alter the responsibilities of DoD Components to protect proprietary data of a private party in which the Department of Defense has "limited rights" or "restricted rights" (as defined in 32 CFR 9-201(c) and 9-601(j) of the DoD Acquisition Regulation, or which are authorized to be withheld from public disclosure under 5 U.S.C. 552(b)(4).

(5) Pertain to, or affect, the release of technical data by DoD Components to foreign governments, international organizations, or their respective representatives or contractors, pursuant to official agreements or formal arrangements with the U.S. Government, or pursuant to U.S. Government-licensed transactions involving such entities or individuals. In the absence of such U.S. Government-sanctioned relationships, however, this Part does apply.

(6) Apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of § 250.2(a)(1) is governed by this Part.

§ 250.3 Definitions.

(a) *Qualified U.S. contractor.*[1] A private individual or enterprise (hereinafter described as a "U.S. contractor") that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export-controlled technical data subject to this Directive from the Department of Defense, that:

(1) The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

(2) Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes[2] in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data are needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data, pursuant to § 250.5(d)(2) are related properly to such business purpose.

(3) The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under cer-

---

[1] Canadian contractors may be qualified in accordance with this Part for technical data that do not require a license for export to Canada under 22 CFR 125.12 of the ITAR and 15 CFR 379.4(d) and 379.5(e) of the EAR submitting an equivalent certification to the U.S. Department of Defense.

[2] This does not require a contract with or a grant from the U.S. Government.

tain circumstances, to obtain an export license prior to the release of technical data within the United States) and agrees that it will not disseminate any export-controlled technical data subject to this Part in a manner that would violate applicable export control laws and regulations.

(4) The U.S. contractor also agrees that, unless dissemination is permitted by § 250.5(h), it will not provide access to export-controlled technical data subject to this Part to persons other than its employees or persons acting on its behalf, without the permission of the DoD Component that provided the technical data.

(5) To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of this Part.

(6) The U.S. contractor itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to perform on U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of this Part. When the certifications required by § 250.3(a) (5) and (6), cannot be made truthfully, the U.S. contractor may request the certification be accepted based on its description of extenuating circumstances.

(b) *Controlling DoD Office.* The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department of Defense and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either a party, a group, or a committee representing the interested activities or DoD Components. (The controlling DoD office is identified on each export-controlled document in accordance with DoD Directive 5230.24.

(c) *Critical Technology.* Technologies that consist of (1) arrays of design and manufacturing know-how (including technical data); (2) keystone manufacturing, inspection, and test equipment; (3) keystone materials; and (4) goods accompanied by sophisticated operation, application, or maintenance know-how that would make a significant contribution to the military potential of any country or combination of countries and that may prove detrimental to the security of the United States (also referred to as militarily critical technology).

(d) *Other Legitimate Business Purposes.* Include:

(1) Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government (for example, through a licensed direct foreign military sale).

(2) Bidding, or preparing to bid, on a sale of surplus property.

(3) Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.

(4) Engaging in scientific research in a professional capacity.

(5) Acting as a subcontractor to a concern described in (d) (1) through (4) of this section; or

(6) Selling technical data subject to this Part in support of DoD contractors or in supporting of the competitive process for DoD contracts, provided such sales are limited solely to DoD contractors or potential DoD contractors who also are qualified U.S. contractors and provided such technical data are related to the purpose for which the qualified U.S. contractor is certified, or selling technical data to foreign contractors or governments overseas after receiving the required export license or approval by the U.S. Government.

(e) *Potential DoD Contractor.* An individual or organization outside the Department of Defense declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in one of the following programs:

(1) The Department of the Army Qualitative Requirements Information Program.

(2) The Department of the Navy Industry Cooperative Research and Development Program.

(3) The Department of the Air Force Potential Contractor Program.

(4) The DoD Scientific and Technical Program; or

(5) Any similar program in use by other DoD Components.

(f) *Public Disclosure.* Making technical data available without restricting its dissemination or use.

(g) *Technical Data with Military or Space Application, or Technical Data.* Any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(h) *United States.* For the purpose of this Part, the 50 States, the District of Columbia, and the territories and possessions of the United States.

§ 250.4 Policy.

(a) In accordance with 10 U.S.C. 140c, the Secretary of Defense may withhold from public disclosure, notwithstanding any other provision of law, any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully without an approval, authorization, or license under E.O. 12470 or the Arms Export Control Act. However, technical data may not be withheld under this section if regulations promulgated under either the Order or Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations. (Pertinent portions of such regulations are set forth in §§ 250.7 and 250.8).

(b) Because public disclosure of technical data subject to this Part is tantamount to providing uncontrolled foreign access, withholding such data from public disclosure, unless approved, authorized, or licensed in accordance with export control laws, is necessary and in the national interest. Unclassified technical data that are not governed by this Part, unless otherwise restricted, shall continue to be made available to the public as well as to state and local governments.

(c) Nothwithstanding the authority provided in § 250.4(a), of this part, it is DoD policy to provide technical data governed by this Part to individuals and enterprises that are determined to be currently qualified U.S. contractors, when such data relate to a legitimate business purpose for which the contractor is certified. However, when such data are for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, and the significance of such data for military purposes is such that release for purposes other than direct support of DoD activities may jeopardize an important U.S. technological or operational advantage, those data shall be withheld in such cases.

(d) This Part may not be used by DoD Components as authority to deny access to technical data to the Congress, or to any Federal, State, or local governmental agency that requires such data for regulatory or other official governmental purposes. Any such dissemination will include a statement that the technical data are controlled by the Department of Defense in accordance with this Part.

(e) The authority provided herein may not be used to withhold from public disclosure unclassified information regarding DoD operations, policies, activities, or programs, including the costs and evaluations of performance and reliability of military and space equipment. When such information does contain technical data subject to this Part, the technical data shall be excised from that which is disclosed publicly.

(f) This Part may not be used as a basis for the release of "limited rights" or "restricted rights" data as defined in 32 CFR 9-201(c) and 9-601(j) of the DoD Acquisition Regulation or that are authorized to be withheld from public disclosure under the Freedom of Information Act (FOIA).

BEST COPY AVAILABLE

(g) This Part may not be used to provide protection for technical data that should be classified in accordance with E.O. 12356 and DoD 5200.1-R.

(h) This Part provides immediate authority to cite 5 U.S.C. 552(b)(3) as the basis for denials under the FOIA of technical data currently determined to be subject to the provisions of this Part.

§ 250.5 Procedures.

All determinations to disseminate or withhold technical data subject to this Part shall be consistent both with the policies set forth in § 250.4 of this part, and with the following procedures:

(a) Requests for technical data shall be processed in accordance with DoD Directive 5230.24 and DoD Instruction 5200.21. FOIA requests for technical data subject to this Part shall be handled in accordance with the procedures established in DoD 5400.7-R. Such FOIA requests for technical data currently determined to be subject to the withholding authority effected by this Part shall be denied under citing the third exemption to mandatory disclosure, and the requester shall be referred to the provisions of this Part permitting access by qualified U.S. contractors.

(b) Upon receipt of a request for technical data in the possession of, or under the control of, the Department of Defense, the controlling DoD office shall determine whether such data are governed by this Part. The determination shall be based on the following:

(1) The office's finding[1] that such data would require an approval, authorization, or license for export under E.O. 12470 or the Arms Export Control Act and that such data may not be exported pursuant to a general, unrestricted license (15 CFR 379.3, EAR) (see § 250.7) or exemption (22 CFR 125.11, ITAR) (see § 250.8).

(2) The office's judgment that the technical data under consideration disclose critical technology with military or space application. For purposes of making this determination, the Militarily Critical Technologies List (MCTL) shall be used as general guidance. The controlling DoD office may request assistance in making such a determination from the Office of the Under Secretary of Defense for Research and Engineering (OUSDR&E) in accordance with procedures established by that office.

(c) The controlling DoD office shall ensure that technical data determined to be governed by this Part are marked in accordance with DoD Directive 5230.24.

(d) The controlling DoD office shall authorize release of technical data governed by this Part to currently qualified U.S. contractors only, as defined in § 250.3(a) of this part, unless one of the following apply:

(1) The qualification of the U.S. contractor concerned has been temporarily revoked in accordance with § 250.5(e) of this part; or

(2) The requested data are judged to be unrelated to the purpose for which the qualified U.S. contractor is certified. When release of technical data is denied in accordance with this section, the controlling DoD office shall request additional information sufficient to explain the intended use of the requested data and, if appropriate, request a new certification (see § 250.3(a) above) describing the intended use of the requested data; or

(3) The technical data are being requested for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense or other U.S. Government agency, in which case the controlling DoD office shall withhold such data if it has been determined by the DoD Component focal point (see § 250.5(e)(5)) that the significance of such data for military purposes is such that release for purpose other than direct support of DoD-approved activities may jeopardize an important technological or operational military advantage of the United States.

(e) Upon receipt of credible and sufficient information that a qualified U.S. contractor has (1) violated U.S. export control law, (2) violated its certification, (3) made a certification in bad faith, or (4) made an omission or misstatement of material fact, the

---

[1] May require consultation with the Department of State or the Department of Commerce, as appropriate.

BEST COPY AVAILABLE

DoD Component shall revoke temporarily the U.S. contractor's qualification. Such revocations having the potential for compromising a U.S. Government investigation may be delayed. Immediately upon such revocation, the DoD Component shall notify the contractor and the OUSDR&E. Such contractor shall be given an opportunity to respond in writing to the information upon which the temporary revocation is based before being disqualified. Any U.S. contractor whose qualification has been revoked temporarily may be reinstated upon presentation of sufficient information showing that the basis for such revocation was in error or has been remedied.

(f) When the basis for a contractor's temporary revocation cannot be removed within 20 working days, the DoD Component shall recommend to the OUSDR&E that the contractor be disqualified.

(g) Charges for copying, certifying, and searching records rendered to requesters shall be levied in accordance with DoD Instruction 7230.7. Normally, only one copy of the same record or document will be provided to each requester. Any release to qualified U.S. contractors of technical data controlled by this Part shall be accompanied by a notice to the recipient as set forth in § 250.9.

(h) Qualified U.S. contractors who receive technical data governed by this Part may disseminate such data for purposes consistent with their certification without prior permission of the controlling DoD office or when such dissemination is:

(1) To any foreign recipient for which the data are approved, authorized, or licensed under E.O. 12470 or the Arms Export Control Act.

(2) To another currently qualified U.S. contractor (as defined in § 250.3(a) above, including existing or potential subcontractors, but only within the scope of the certified legitimate business purpose of such recipient.

(3) To the Departments of State and Commerce, for purposes of applying for appropriate approvals, authorizations, or licenses for export under the Arms Export Control Act or E.O. 12470. Any such application shall include a statement that the technical data for which such approval, authorization, or license is sought are controlled by the Department of Defense in accordance with this Part.

(4) To Congress or any Federal, State, or local governmental agency for regulatory purposes, or otherwise as may be required by law or court order. Any such dissemination shall include a statement that the technical data are controlled by the Department of Defense in accordance with this Part.

(i) A qualified U.S. contractor desiring to disseminate technical data subject to this Part in a manner not permitted expressly by the terms of this Part shall seek authority to do so from the controlling DoD office.

(j) Any requester denied technical data, or any qualified U.S. contractor denied permission to redisseminate such data, pursuant to this Part, shall be provided promptly a written statement of reasons for that action, and advised of the right to make a written appeal of such determination to a specifically identified appellate authority within the DoD Component. Appeals of denials made under DoD 5400.7-R (reference (e)) shall be handled in accordance with procedures established therein. Other appeals shall be processed as directed by the OUSDR&E.

(k) Denials shall cite 10 U.S.C. 140c as implemented by this Part, and, in the case of FOIA denials made in reliance on this statutory authority, 5 U.S.C. 552(b)(3). Implementing procedures shall provide for resolution of any appeal within 20 working days.

§ 250.6 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E) shall have overall responsibility for the implementation of this Directive and shall designate an office to:

(1) Administer and monitor compliance with this Directive.

(2) Receive and disseminate notifications of temporary revocation in accordance with § 250.5(e) of this part.

(3) Receive recommendations for disqualification made in accordance with

§ 250.5(f) of this part, and act as initial disqualification authority.

(4) Provide, when necessary, technical assistance to DoD Components in assessing the significance of the military or space application of technical data that may be withheld from public disclosure under this Directive.

(5) Establish procedures to develop, collect, and disseminate certification statements and ensure their sufficiency, accuracy, and periodic renewal, and to make final determinations of qualification.

(6) Ensure that the requirements of this Directive are incorporated into the DoD Federal Acquisition Regulation Supplement for optional application to contracts involving technical data governed by this Directive.

(7) Develop, in conjunction with the General Counsel, Department of Defense, guidelines for responding to appeals.

(8) Develop procedures to ensure that DoD Components apply consistent criteria in authorizing exceptions under § 250.5(i) of this part.

(9) Establish procedures and appropriate mechanisms for the certification of qualified U.S. contractors, pursuant to § 250.6(a)(5) of this part, within 60 days of the effective date of this Directive. During this 60-day period, requests for technical data governed by this Directive shall be processed in accordance with procedures in effect before the promulgation of this Directive.

(10) Take such other actions that may be required to ensure consistent and appropriate implementation of this Directive within the Department of Defense.

(b) The Under Secretary of Defense for Policy shall:

(1) Develop and promulgate, as required, policy guidance to DoD Components for implementing this Directive.

(2) Develop procedures with the Departments of State and Commerce to ensure referral of export cases involving technical data governed by this Directive to the Department of Defense.

(c) The Assistant Secretary of Defense (Public Affairs) shall:

(1) Monitor the implementation of provisions of this Directive that pertain to DoD 5400.7-R.

(2) Provide such other assistance as may be necessary to ensure compliance with this Directive.

(d) The General Counsel, Department of Defense, shall:

(1) Assist in carrying out the provisions of this Directive by advising DoD Components with respect to the statutory and regulatory requirements governing the export of technical data.

(2) Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

(e) The Heads of DoD Components shall:

(1) As the delegated authority, have the option to redelegate the authority to withhold technical data in accordance with this Directive.

(2) Disseminate and withhold from public disclosure technical data subject to this Directive in a manner consistent with the policies and procedures set forth herein.

(3) Designate a focal point to (i) ensure implementation of this Directive; (ii) identify classes of technical data the release of which is governed by § 250.5(d)(3) of this part; (iii) act on appeals relating to case-by-case denials of technical data; (iv) suspend a contractor's qualification pursuant to § 250.(e) of this part; (v) receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate, (vi) recommend disqualification to the OUSDR&E.

(4) Promulgate and effect regulations to implement this Directive within 180 days.

(5) Disseminate technical data governed by this Directive in the manner prescribed herein, to the extent feasible, during the period after which certification procedures have been established under § 250.6(a)(9) of this part, but before DoD Components have issued implementing regulations under § 250.6(e)(4) of this part. However, if such dissemination is not feasible, the DoD Component may process requests for such data in accordance with procedures in effect before the promulgation of this Directive.

§ 250.7 Pertinent portions of Export Administration Regulations (EAR).

The following pertinent section of the EAR is provided for the guidance of DoD personnel in determining the releasability technical data under the authority of this Part.

EXPORT ADMINISTRATION REGULATIONS 15 CFR 379.3

General License GTDA: Technical Data Available to All Destinations

A General License designated GTDA is hereby established authorizing the export to all destinations of technical data described in § 379.3(a), (b), or (c), below:

(a) *Data Generally Available.*

Data that have been made generally available to the public in any form, including

(1) Data released orally or visually at open conferences, lectures, trade show, or other media open to the public; and

(2) Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

The term "nominal cost" as used in § 379.3(a)(2), is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data. If the cost is as much as to prevent the technical data from being generally available to the public, General License GTDA would not be applicable.

(b) *Scientific or Educational Data.*

(1) Dissemination of information not directly and significantly related to design, production, or utilization in industrial processes, including such dissemination by correspondence, attendance at, or participation in, meetings; or

(2) Instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or utilization in industrial processes.

(c) *Patent Applications.*

Data contained in a patent application, prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office. (No validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement, or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office 37 CFR Part 5. See § 370.10(j).)

§ 250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).

The following pertinent section of the ITAR is provided for the guidance of DoD personnel in determining the releasibility of technical data under the authority of this Part.

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS 22 CFR 125.11

General Exemptions

(a) Except as provided in § 26.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) If it is in published[4] form and subject to public dissemination by being:

(i) Sold at newsstands and bookstores;

(ii) Available by subscription or purchase without restrictions to any person or available without cost to any person;

(iii) Granted second class mailing privileges by the U.S. Government; or

(iv) Freely available at public libraries.

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacturing of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) If the export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with Part 124 of this chapter.

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Govenment and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the ex-

---

[4] The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in § 125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

portation of technical data without compliance with Part 124 of this subchapter.)

(5) If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and munufacturing techniques.

(6) If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) If it consists of operations, maintenance and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient.[5]

(8) If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) If it consists solely of technical data being reexported to the original source of import.

(10) If the export is by the prime contractor in direct support and within the technical and/or product limitations of a "U.S. Government approved project" and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are "U.S Government approved," and accord an exemption to the applicant who applies for such verification and exemption, where appropriate, under this subparagraph.[6]

(11) If the export is solely for the use of American citizen employees of U.S. firms provided the U.S. firm certifies its overseas employee is a U.S. citizen and has a "need to know."[7]

(12) If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(b) *Plant visits.* Except as restricted by the provisions of § 126.01 of this subchapter:

(1) No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data [are] disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and the requirements of section V, paragraph [41(d)] of the Industrial Security Manual are met.

(2) No license shall be required for the documentary disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the document does not contain technical data as defined in § 125.01 in excess of that released orally or visually during the visit, is within the terms of the approved visit request, and the person in the United States assures that the technical data will not be used, adopted for use, or disclosed to others for the purpose of manufacture or production without the prior approval of the Department of State in accordance with Part 124 of this subchapter.

(3) No Department of State approval is required for the disclosure of oral and visual classified information during the course of a plant visit by foreign nationals provided the visit has been approved by the cognizant U.S. Defense agency and the requirements of section V, paragraph [41(d)] of the Defense Industrial Security Manual are met.

§ 250.9 Notice to accompany the dissemination of export-controlled technical data.

(a) Export of information contained herein, which includes, in some circumstances, release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International

---

[5] Not applicable to technical data relating to Category VI(d) and Category XVI.

[6] Classified information may also be transmitted in direct support of and within the technical and/or product limitation of such verified U.S. Government approved projects without prior Department of State approval provided the U.S. party so certifies and complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other rquirements of cognizant U.S. Government departments or agencies).

[7] Classified information may also be exported to such certified American citizen employees without prior Department of State approval provided the U.S. party complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies). Such technical data or information (classified or unclassified) shall not be released by oral, visual, or documentary means to any foreign person.

BEST COPY AVAILABLE

Traffic in Arms Regulations (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.

(b) Under 22 U.S.C. 2778 the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of $100,000, or both. Under 50 U.S.C., Appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to $1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years, or a fine of up to $250,000, or both.

(c) In accordance with your certification that establishes you as a "qualified U.S. contractor," unauthorized dissemination of this information is prohibited and may result in disqualification as a qualified U.S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense.

(d) The U.S. Government assumes no liability for direct patent infringement, or contributory patent infringement or misuse of technical data.

(e) The U.S. Government does not warrant the adequacy, accuracy, currency, or completeness of the technical data.

(f) The U.S. Government assumes no liability for loss, damage, or injury resulting from manufacture or use for any purpose of any product, article, system, or material involving reliance upon any or all technical data furnished in response to the request for technical data.

(g) If the technical data furnished by the Government will be used for commercial manufacturing or other profit potential, a license for such use may be necessary. Any payments made in support of the request for data do not include or involve any license rights.

(h) A copy of this notice shall be provided with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.

PART 251—SALE OF GOVERNMENT-FURNISHED EQUIPMENT OR MATERIEL AND SERVICES TO U.S. COMPANIES

Sec.
251.1 Reissuance and purpose.
251.2 Applicability.
251.3 Policy.
251.4 Definitions.
251.5 Procedures.
251.6 Responsibilities.
251.7 Information requirements.

Appendix 1—Format of Status Report on Sales of GFE and GFM and Related Quality Assurance Services (RCS DSAA(Q) 1149)

Authority: Sec. 305(2) Pub. L. 98-525, Pub. L. 97-392, 10 U.S.C. 2208(i), 22 U.S.C. 2770, and 96 Stat. 1962.

Source: 51 FR 3042, Jan. 23, 1986, unless otherwise noted.

§ 251.1 Reissuance and purpose.

This part reissues 32 CFR Part 251 expanding its coverage to implement 10 U.S.C. 2208(i). It provides policy, assigns responsibilities, and prescribes procedures.

§ 251.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 251.3 Policy.

(a) The Department of Defense executes the authority provided by 22 U.S.C. 2770 to sell to U.S. companies defense articles and defense services (hereafter also "items") in connection with proposed exports on a direct commercial basis pursuant to State Department licenses or approvals under 22 CFR Parts 121-130 and 22 U.S.C. 2778-2779. The Department of Defense also executes the authority provided by 10 U.S.C. 2208(i) to sell articles manufactured by certain arsenals and related services to a person outside the Department of Defense. 10 U.S.C. 2208(i) applies only to a work-

BEST COPY AVAILABLE

ing capital funded Department of Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms.

(b) Sales under 22 U.S.C. 2770 may be authorized only if the following applies:

(1) The items are of a type approved for foreign military sales (FMS);

(2) Sale to a U.S. company under this part would simplify and expedite the direct commercial sale involved;

(3) The items are of the type that would be supplied to the prime contractor as government-furnished equipment (GFE) or materiels (GFM) for manufacture or assembly into end items for use by the Military Services, and have in fact been supplied as GFE or GFM in connection with any past or present DoD procurement of such end items; and

(4) The other provisions of this part are complied with.

(c) Sales under 10 U.S.C. 2208(i) may be authorized by the Department of the Army only if the following applies:

(1) The article or related services are sold to a United States manufacturer, assembler, or developer (i) for use in developing new products or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government.

(2) The sale has been previously approved by the Office of Deputy Assistant Secretary of Defense (Production Support), or a designee. When commercial export is involved, the Defense Security Assistance Agency approval is also required.

(3) The other applicable provisions of this part are complied with.

[51 FR 3042, Jan. 23, 1986; 51 FR 4732, Feb. 7, 1986]

§ 251.4 Definitions.

(a) *Authorized purchasers under 22 U.S.C. 2770.* A company incorporated in the United States as defined in paragraphs (a) (1) and (3) or in paragraphs (a) (2) and (3) of this section.

(1) The existing prime contractor for the specific end item with a DoD contract for final assembly or final manufacture in the United States of the end item for use by the Military Services.

(2) A known DoD-qualified producer of the end item to be used by the Military Services, or one considered by the commanding officer of the Military Department procuring activity to be a responsible contractor for final assembly or final manufacture in the United States of the end item for use by the Military Services, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(3) A U.S. manufacturer which has an approved license under the International Traffic in Arms Regulations, which provides for the use of GFE or GFM in the direct commercial export to a foreign country for the use of the armed forces of that country or international organization. The license shall identify the defense end item being sold and exported, the quantity and identification of concurrent and follow-on spares, end item delivery schedule, and name of the ultimate user.

(b) *Authorized purchasers under 10 U.S.C. 2208(i).* A company as defined in paragraphs (b) (1) through (3) of this section. Where export of an article from the United States is involved, paragraphs (b)(4) of this section also applies.

(1) A company incorporated in the United States.

(2) A DoD-qualified manufacturer, assembler, or developer of articles.

(3) A company considered by the Commanding Officer of the Military Department procuring activity to be a responsible contractor for the proposed work.

(4) A company exporting articles is restricted to sales to a friendly foreign government and must have an approved license under the International Traffic in Arms Regulations, which provides for use or sale of the article in the direct commercial export to a foreign country for use by the armed forces of that country. The license shall identify the article being sold and exported, the quantity and identification of arsenal produced items provided as concurrent and follow-up spares, item delivery schedule and name of the ultimate user.

[51 FR 3042, Jan. 23, 1986; 51 FR 4732, Feb. 7, 1986]

§ 251.5 Procedures.

(a) *Defense articles and defense services authorized for sale under 22 U.S.C. 2770.* (1) Defense items that currently are in fact being furnished (or have in fact been furnished) by the U.S. Government as GFE or GFM to a U.S. company that is or has been under contract to the Department of Defense for final assembly or final manufacture into an end item for use by the Military Services.

(2) Defense services that are directly associated with the installation, testing, and certification of GFE that are or have been in fact provided by the U.S. Government to a U.S. company in connection with the U.S. Government procurement of similar end items for use by the Department of Defense. Such defense services, including transportation under paragraph (e)(3)(ii) may be performed only in the United States and only in support of the sale of defense articles under this part, that is, services alone may not be provided under this part.

(3) Defense items shall not be procured by the Department of Defense for sale under section 30 if they are available to the authorized purchaser directly from U.S. commercial sources at such times as may be required to meet the delivery schedule of the authorized purchaser.

(b) *Articles and services authorized for sale under 10 U.S.C. 2208(i).* (1) Articles that can be manufactured without present or future interference with performance of work by the Arsenal for the Department of Defense or for a contractor performing for the Department of Defense.

(2) Articles shall not be sold by Army Arsenals if they are readily available to the authorized purchaser directly from a U.S. commercial source.

(3) Services that are directly associated with the articles sold. Such services, including transportation under § 251.5(e)(3)(ii) may be performed only in the United States and only in support of the sale of articles under this part, that is, services alone may not be provided under this part.

(4) Nothing in this part shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act to items which incorporate or are produced through the use of an article sold under this part.

(c) *Pricing, financing, and accounting.* (1) To afford U.S. companies the ability to conduct planning and marketing of items, Military Departments are authorized to provide cost and delivery scheduling data to authorized potential purchasers (see paragraph (b)(4) of this section) in advance of execution of a sales agreement. Such data shall be identified as estimates and shall not be binding on the U.S. Government. Efforts shall be made to provide accurate data.

(2) Actual sales of items shall be made in cash, with payment upon signature of the sales agreement by the representatives of the U.S. Government and the U.S. company. Payment shall be received by the U.S. Government in U.S. dollars upon such signature and shall precede procurement action by the U.S. Government or, in cases of stock sales, delivery to the authorized purchaser.

(3) Sales prices for procurement, or sales from DoD stocks under section 30 shall be established in accordance with DoD 7290.3-M. Prices to be charged shall be the same as those established for FMS of the same defense articles and services, to include all applicable FMS surcharges and accessorial charges, including an amount for administration not less than the FMS administrative surcharge. Full replacement cost pricing shall be used for all sales of defense articles from DoD stocks and all diversions from DoD procurement, even when a lower price could be charged under FMS pricing principles. Sales prices (under 10 U.S.C. 2208(i)) for articles to be exported or for independent research and development will include the same FMS surcharges and accessorial charges. Contracts with U.S. contractors for DoD requirements will be priced in the same manner as material procured by the Department of Defense. Sales to Federal customer other than the Department of Defense shall be priced in accordance with Chapter 26 of the DoD Accounting Manual, DoD 7220.9-M.

(4) An obligation for a reimbursable procurement may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2). If there is an increase in the procurement contract cost, the purchaser shall be required to make additional cash payment to the Military Service to fund the contract fully, plus applicable surcharges, when such an increase is known. The replacement cost of Defense Articles delivered from DoD stocks may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2).

(5) Accountability shall be in accordance with DoD 7290.3-M with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges, on items sold under 22 U.S.C. 2770 such as nonrecurring cost recoupment charge, asset use charge, and GMS administrative surcharge, shall be accountable as FMS surcharges under Dod 7290.3-M. Amounts collected for items sold under 10 U.S.C. 2208(i) shall be credited to accounts specified in paragraph 10402 of Foreign Military Sales Financial Management Manual, DoD 7290.3-M.

(d) *Establishment of priorities and allocations.* (1) Unless otherwise directed by the Under Secretary of Defense for Policy in coordination with the Assistant Secretary of Defense (Acquisition and Logistics), sales are not authorized if they result in inventory stockage levels dropping below the established reorder points. Except as provided in section 21(i) of the Arms Export Control Act, sales are not authorized if they constitute a withdrawal of assets from U.S. stocks that result in a significant adverse impact on the combat readiness of the Military Services.

(2) When procurement is required, or manufacture in government-owned facilities is necessary, the Military Department concerned shall determine whether a sale will be concluded. Unless directed by the Defense Security Assistant Agency (DSAA) (see paragraph (d)(3)) the Military Department concerned is responsible for the establishment of priorities for procurement or manufacture and for allocations and delivery of military equipment and services. In determining production priorities and allocations, the Military Departments shall consider fully all existing DoD requirements for U.S. and other foreign requirements and normally will schedule delivery, manufacture, and allocation on a first-in, first-out basis. In making such determinations the Military Departments shall be guided by DoD Directive 4410.6 and related assignments of force activity designators by the Joint Chiefs of Staff.

(3) If there are two or more competing foreign requirements, the Director, DSAA, shall determine priorities or shall make allocations. Such priorities or allocations for foreign requirements shall supersede determinations made by the Military Department under paragraph (d)(2).

(e) *Sales agreement.* (1) The sales agreement with the U.S. company will identify the company, the items and quantities being sold, the estimated availability of the items, whether from DoD stocks or procurement, the estimated price of the items, the end item into which the GFE or GFM item or items will be incorporated for resale, and, for sale under 22 U.S.C. 2770, the identity of the foreign purchaser and the number and date of the munitions export license, or State Department approval.

(2) The sales agreement shall be approved by the appropriate Military Department's General Counsel and shall, as a minimum, indicate that the U.S. Government:

(i) Retains the right to cancel in whole or in part or to suspend performance at any time under unusual or compelling circumstances if the national interest so requires.

(ii) Provides no warranty or guarantee, either expressed or implied, regarding the items being sold.

(iii) Shall provide best efforts to comply with the delivery leadtime cited, but will incur no liability for failure to meet an indicated delivery schedule.

(iv) Shall use its best efforts to deliver at the estimated prices, but that the purchaser is obligated to reimburse the U.S. Government for the total cost if it is greater than the estimated price.

(3) Moreover the sales agreement shall state that:

(i) Payment terms are cash, payable in advance, in accordance with § 251.5(c)(2);

(ii) Delivery shall be "FOB origin" with purcahser to arrange for continental U.S. (CONUS) transportation, except for sensitive or hazardous cargo that normally shall be shipped by way of the Defense Transportation Service (DTS) at rates established in DoD 7290.3-M;

(iii) The purchaser is responsible for both insurance coverage, if desired, and ultimate customs clearance for export;

(iv) The purchaser is required to reimburse the U.S. Government for all costs incurred by the U.S. Government if the purchase agreement is cancelled by the purchaser before delivery of the defense material or completion of defense services.

(v) The purchaser renounces all claims against the U.S. Government, its officers, agents, and employees arising out of or incident to this agreement, whether concerning injury to or death of personnel, damage to or destruction of property, or other matters, and will indemnify and hold harmless the U.S. Government, its officers, agents, and employees against any such claims of third parties and any loss or damage to U.S. Government property.

(vi) The items sold to foreign governments on a direct commercial basis under an approved export license may be used only for incorporation into end items or as concurrent or follow-on support in conjunction with a sale of the end item and for no other purpose. The U.S. company agrees to provide for protection of classified information and will require the agreement with the foreign government to provide for protection of U.S. classified information.

[51 FR 3042, Jan. 23, 1986, as amended at 51 FR 4732, Feb. 7, 1986]

§ 251.6 Responsibilities.

(a) The *Under Secretary of Defense for Policy*, or designee, shall provide overall guidance regarding the sale of GFE or GFM to U.S. companies for commercial export.

(b) The *Director, Defense Security Assistance Agency*, shall: (1) Monitor the sale of GFE or GFM to U.S. companies and implementation of this part with coordination with the Assistant Secretary of Defense for Acquisition and Logistics where applicable.

(2) Determine priorities or make allocations between two or more competing foreign requirements.

(c) The *Assistant Secretary of Defense (Acquisition and Logistics)*, or designee shall approve all sales under 10 U.S.C. 2208(i) in accordance with policies set forth in DoD Directive 4005.1.

(d) *The Secretaries of the Military Departments:* (1) Shall execute the functions conferred upon the Secretary of Defense by section 30.

(2) May redelegate the authority under 22 U.S.C. 2770, but such delegation may not be below the level of the commanding officer or head of a procuring activity of the Military Department responsible for procurement or acquisition of the applicable end item.

(3) Shall provide a quarterly report to the Director, DSAA, of sales made to U.S. companies under 22 U.S.C. 2770.

(e) *The Secretary of the Army:*

(1) Shall execute the functions conferred by 10 U.S.C. 2208(i).

(2) May delegate the authority under 10 U.S.C. 2208(i).

(f) *The Assistant Secretary of Defense (Comptroller)* shall monitor pricing compliance and financial administration set forth under DoD 7290.3-M.

[51 FR 3042, Jan. 23, 1986; 51 FR 4732, Feb. 7, 1986]

§ 251.7 Information requirements.

(a) The quarterly report (see § 251.6(d)(3)) shall be provided within 30 days of the end of each fiscal quarter and shall contain the information specified in Appendix 1.

(b) The reporting requirement of this Directive has been assigned Report Control Symbol DSAA(Q)1149. The report format is at Appendix 1.

[51 FR 3042, Jan. 23, 1986; 51 FR 4732, Feb.7, 1986]

APPENDIX 1—FORMAT OF STATUS REPORT ON SALES OF GFE OR GFM AND RELATED QUALITY ASSURANCE SERVICES (RCS DSAA (Q)1149)

For period ending

(Military Department)

U.S. company	Items[1] being sold	Quantities	Stock source	Procurement source	Estimated availability	Estimated price	Recipient foreign country and recipient armed force	Export[2] license No. and date	Date of delivery	Final price

---

[1] Provide breakout of items being sold as concurrent or follow-on spares that will not be incorporated into an end item by the U.S. company before sale to a foreign government.

[2] Or other State Department approval.

PART 252—DEPARTMENT OF DEFENSE OFFSHORE MILITARY ACTIVITIES PROGRAM

Sec.
252.1 Purpose.
252.2 Applicability and scope.
252.3 Definitions.
252.4 Policy.
252.5 Responsibilities.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 44 FR 27095, May 9, 1979, unless otherwise noted.

§ 252.1 Purpose.

This part updates established policies and procedures for the utilization of offshore areas by the Department of Defense. This part will serve as the basis for a comprehensive Offshore Military Activities Program.

§ 252.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components") and concern utilization for military purposes of the offshore areas.

§ 252.3 Definitions.

(a) *Outer continental shelf.* All submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (ch. 65, 67 Stat. 29 (1953), codified at 43 U.S.C. 1301 *et seq.* (1970)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdicion and control.

(b) *State-owned offshore submerged lands.* Coastal portions of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act.

(c) *Offshore areas.* The water surface areas and the submerged land areas over which the United States exercises jurisdiction and control.

(d) *Offshore military activities program.* The program established here to implement DoD policies and procedures for those activities, operations, and installations that require an offshore environment.

§ 252.4 Policy.

The Department of Defense supports the basic principle that lands comprising the Outer Continental Shelf and State owned offshore areas should be utilized in the highest national interest. The Department of Defense policy, therefore, is that its use of offshore areas will be limited to that considered essential for military purposes, and that such use will be shared with non-military interests to the maximum extent feasible.

(a) Upon determination by the Department of the Interior, or the coastal States, that the mineral potential of certain offshore areas presently being or proposed to be used for military purposes must be explored or exploited, the Department of Defense will endeavor to accommodate to the maximum feasible extent the joint military and commercial utilization of these areas.

(b) If it is determined that non-military interests cannot be accommodated without degradation of military programs, and alternatives are neither available nor economically or militarily feasible, the Department of Defense will attempt to reach agreement with the Department of the Interior or the coastal States, as applicable, to exclude conflict areas from leasing programs.

§ 252.5 Responsibilities.

(a) *The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD (MRA&L))*, or designee, in meeting the objectives of the policies here established, shall:

(1) Develop and maintain a comprehensive program for the military use of the offshore environment; and provide direction and guidance to the Military Departments, as appropriate.

(2) Review and direct Military Departments' offshore activities.

(3) Negotiate, in coordination with the appropriate Military Departments, and enter into such administrative arrangements and agreements with the Department of the Interior and the States as may be necessary to ensure that the Department of the Interior's or States' leasing plans and programs are compatible with the Department of Defense missions.

(4) Represent the Department of Defense on the Secretary of the Interior's Outer Continental Shelf Advisory Board.

(5) Conduct continuing liaison with the Department of the Interior and appropriate coastal States to ensure compatibility between each other's programs.

(6) Inform concerned Military Departments of new developments in the Department of the Interior's, States' and significant industry mineral leasing plans that may affect present or potential military interests in offshore areas.

(b) Under the general direction of the ASD(MRA&L), the *Military Departments* shall.

(1) Review proposed Department of the Interior's and States' mineral leasing maps and alert the ASD(MRA&L) of proposed lease areas that could be incompatible with the military missions. Where joint use is feasible, recommend conditions and stipulations that should be imposed in leases to ensure the integrity of military missions, and otherwise protect the interests of the United States against claims arising out of damage to property or injury to non-Government personnel.

(2) Establish and maintain lines of communications and coordination to ensure that each Military Department is fully cognizant of plans, programs, and negotiations of the other Military Departments regarding offshore areas.

(3) Review notices referred to in § 252.5(d)—and provide comments to the Chief of Engineers (Department of the Army) regarding the compatibility of proposed actions with offshore military activities.

(4) Inform the Chief of Engineers, Department of the Army, of any change in the status of offshore ranges, restricted areas or operation areas.

(5) Develop legislation, when requested by the General Counsel, DoD pursuant to the Engle Act, (Pub. L. No. 85-337, 72 Stat. 28 (1958), codified at 43 U.S.C. 155 et seq. (1070)), to restrict specified areas from operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act, (ch. 345, 67 Stat. 462 (1953), codified at 43 U.S.C. 1331 *et seq.* (1970 and Supp. V. 1975) as amended by Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 629).

(6) Conduct other activities related to the offshore environment as requested by the ASD(MRA&L).

(c) This part does not limit the responsibilities of the Secretary of the Navy assigned under the provisions of the Marine Resources and Engineering Development Act of 1966, (Pub. L. No. 89-454, 80 Stat. 203, codified at 33 U.S.C. 1101 *et seq.* (1976)). Moreover, the *Secretary of the Navy* shall:

(1) Represent the Department of Defense on matters for which the Secretary is assigned responsibility pursu-

ant to the Marine Resources and Engineering Development Act of 1966.

(2) Inform the ASD(MRA&L) of programs planned or developed, and actions taken to ensure that marine resources and the Offshore Military Activities Programs are consistent.

(d) The *Secretary of the Army* will provide notices to the ASD(MRA&L), to affected military installations and activities and to the Director, Defense Mapping Agency (Hydrographic Center), of potential obstructions and hazards to navigation pursuant to the River and Harbor Act of 1899 (ch. 425, 30 Stat. 1151, codified at 33 U.S.C. 401 *et seq.* (1976), and proposed permits for obstructions to be located on the Outer Continental Shelf pursuant to section 4(e) of the Outer Continental Shelf Lands Act to ensure compatibility with the Offshore Military Activities Program.

PART 253—ASSIGNMENT OF AMERICAN NATIONAL RED CROSS AND UNITED SERVICE ORGANIZATIONS, INC., EMPLOYEES TO DUTY WITH THE MILITARY SERVICES

Sec.

253.1 Reissuance and purpose.
253.2 Applicability and scope.
253.3 Definitions.
253.4 Policy.
253.5 Responsibilities.
253.6 Procedures.

AUTHORITY: Pub. L. 83-131, 5 U.S.C. 301.

SOURCE: 48 FR 35644, Aug. 5, 1983, unless otherwise noted.

§ 253.1 Reissuance and purpose.

This rule reissues this Part to update policy and procedures governing the investigation of American National Red Cross (hereafter "Red Cross") employees and United Service Organizations, Inc. (USO), staff for the purpose of determining the security acceptability of such personnel for assignment to duty with the Military Services.

§ 253.2 Applicability and scope.

(a) This rule applies to the Office of the Secretary of Defense, the Military Departments, the Unified and Specified Commands, and the Defense Investigative Service (hereafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) This rule does not apply to U.S. citizens or foreign nationals who are available locally at overseas locations for temporary or part-time employment with the Red Cross or the USO. Policy and procedures governing investigation and security acceptability of locally hired employees shall be determined by the Military Department concerned.

§ 253.3 Definition.

Employee. Any full-time, salaried individual serving with or employed by the Red Cross or the USO who is subject to assignment for overseas duty with the Military Services.

§ 253.4 Policy.

(a) It is the policy of the Department of Defense that an employee shall be accepted for assignment to duty with the Military Services overseas only after it first has been determined, based upon an appropriate personnel security investigation, that such acceptance for assignment is clearly consistent with the national interest.

(b) The standard and criteria for determining the security acceptability of an employee for assignment or continuation of assignment with the Military Services overseas shall be identical to those established for making security clearance determinations for personnel employed in private industry under §§ 155.4 and 155.5 of this title.

§ 253.5 Responsibilities

(a) The *Deputy Under Secretary of Defense for Policy,* or designee, the *Director, Security Plans and Programs,* shall serve as the primary contact between the Department of Defense and the Red Cross and USO for all matters relating to the policy and procedures prescribed herein.

(b) *Heads of DoD Components* shall comply with the provisions of this rule.

§ 253.6 Procedures

(a) Employees who are U.S. citizens shall have been the subject of a national agency check (NAC), completed with favorable results, before being nominated for assignment with the Military Services overseas.

(b) Employees who are not U.S. citizens shall have been the subject of a background investigation (BI), completed with favorable results, before being nominated for assignment with the Military Services overseas.

(c) An employee will not be assigned for duty with the Military Services overseas or continued in such an assignment when it has been determined that assignment or continuation of assignment is not clearly consistent with the national interest.

(d) Completed security forms (DD Form 398, Personnel Security Questionnaire (BI/SBI), or 398-2, Personnel Security Questionnaire (National Agency Check)) shall be forwarded to the Defense Industrial Security Clearance Office (DISCO), Defense Investigative Service, for initiation of the NAC or BI, as appropriate.

(e) Upon completion of the appropriate investigation, the results shall be returned to the DISCO where a determination shall be made concerning security acceptability of the employee. If the determination is favorable, the DISCO shall provide a statement to that effect to the Red Cross or the USO. If the DISCO is unable to make a favorable security acceptability determination, the procedures described in § 253.6(f)(3), below, shall apply.

(f) Whenever any DoD Component or the Red Cross or the USO receives information indicating that an employee's assignment or continuation of assignment with the Military Services overseas may not clearly be consistent with the national interest, the information shall be furnished to the DISCO for appropriate review. In such cases, the following actions shall be taken:

(1) The DISCO shall arrange for the conduct of any investigation warranted to resolve the adverse or questionable information.

(2) In cases arising after the initial security acceptability determination has been made, the DISCO shall review the information or report of investigation to determine whether the security acceptability determination is to continue in effect. If such adjudication is favorable, no further action is required. The Red Cross or the USO will not be notified in such cases in order to preclude the possibility of any adverse inference being drawn.

(3) If, after reviewing the information or report of investigation, the DISCO is unable to make a favorable security acceptability determination, the case shall be referred for further processing in accordance with Part 155 of this title.

PART 255—QUALITY ASSURANCE

Sec.

255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Responsibilities.
255.5 Concepts.
255.6 Policy.

AUTHORITY: 10 U.S.C. 2202.

SOURCE: 37 FR 11562, June 9, 1972, unless otherwise noted.

§ 255.1 Purpose.

This part establishes Department of Defense quality assurance policies designed to assure that all materiel, data, supplies, and services developed, procured, produced, stored, operated, maintained, overhauled, or disposed of by or for the DoD meet the following objectives.

(a) That materiel, data, supplies, and services conform to specified requirements;

(b) That specified requirements for materiel, data, supplies, and services are practical and enforceable; and

(c) That user dissatisfaction and mission ineffectiveness are prevented and/or eliminated.

§ 255.2 Applicability.

The provisions of this part apply to the Military Departments, the Defense Supply Agency, the National Security Agency and the Defense Communications Agency (hereafter referred to collectively as "DoD Components").

§ 255.3 Definitions.

(a) *Quality.* The composite of materiel attributes including performance.

(b) *Quality assurance.* A planned and systematic pattern of all actions necessary to provide adequate confidence that materiel, data, supplies, and services conforms to established technical requirements and achieves satisfactory performance.

(c) *Metrology.* The science of measurement for determination of conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

(d) *Calibration.* Comparison of a standard or measuring equipment instrument with a standard of higher accuracy to insure that the former is within specified limits throughout its entire range.

§ 255.4 Responsibilities.

(a) The Assistant Secretary of Defense (Installations and Logistics) shall provide overall policy guidance on DoD quality assurance.

(b) Each DoD Component shall designate a central management focal point to be responsible for directing and monitoring quality assurance policy compliance with the provisions of this part.

(c) There is hereby established a DoD Quality Assurance Council composed of one General or Flag rank officer and one senior civilian from each of the Military Departments and the Defense Supply Agency (DSA). The Council shall be chaired by a representative of the ASD (I&L) and will provide consultation and advice to the ASD (I&L) on quality assurance matters. The DoD Quality and Reliability Assurance Career Management Board (see DoD Manual 1430.10-M-2[1]) shall be a subgroup of the Council.

(d) DoD Component shall, within the provisions of the Defense Standardization Program as outlined in DoD Directive 4120.3,[2] "Defense Standardization Program," April 23, 1965, assure that all specifications and standards intended for implementation of the policies contained herein are fully coordinated.

(e) DoD-Wide Integrated Commodity Managers assigned responsibility under DoD Instruction 4115.1,[2] DoD Coordinated Procurement Program-Purchase Assignments," October 14, 1968, in collaboration with the Military Departments and DSA, develop, establish and issue uniform procedures to be utilized in conducting government procurement quality assurance (see § 255.6(b)(2)) as appropriate.

(f) The Joint Logistics Commanders through the existing Joint Technical Coordinating Group for Metrology and Calibration (JTCG-METCAL) shall provide for interservice coordination of the DoD Calibration and Metrology Program. Its principal subgroup, the Calibration Coordination Group (CCG), shall be the DoD point of contact with the National Bureau of Standards on DoD requirements for calibration, and calibration engineering services (e.g., requirements involving new equipment and techniques, improved accuracies, expanded ranges), see "Procedure for Determining, Estimating the Cost of and Arranging for the Radio and Electronic Calibration Services that Department of Defense Activities Obtain from the National Bureau of Standards."[3]

§ 255.5 Concepts.

(a) The primary purpose of quality assurance is the enforcement of technical criteria and requirements governing all materiel, data, supplies, and services developed, procured, produced, stored, operated, maintained, overhauled, or disposed of by or for the DoD.

(b) Functional organizations creating technical criteria are responsible for translation of functional requirements including reliability and maintainability into quantitative requirements that can be contractually specified with appropriate demonstration.

---

[1] Filed as part of original. This is an internal Department of Defense Manual, which may be viewed in the Office of Assistant Secretary of Defense (M&RA), room 3D982, Pentagon, Telephone: OX 50813.

[2] Filed as part of original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 300.

[3] Filed as part of original.

(c) Continued review of technical criteria to insure against errors and omissions is an essential element of quality assurance.

(d) The quality of design of an end product may, in part, be assessed on the basis of reviewing experience gained with the various components that contribute to the design.

(e) Functional test of the end product in a real or simulated environment is required where feasible to confirm that performance requirements, including quality, are met.

§ 255.6 Policy.

(a) *General.* (1) Determination that materiel, data, supplies, and services meet requirements shall be based on objective evidence, including the results of direct product examination and test, review of procedures, processes, records, and documentation. The results shall be documented to support the planning of corrective action and other management activity.

(2) The degree and type of quality assurance provided during the life of a product (from development through disposal) shall be optimally varied to assure mission responsiveness.

(3) Defect prevention shall be fostered by:

(i) Timely and integrated planning of needed quality assurance;

(ii) Monitoring of appropriate procedures, systems, and resources, and

(iii) Correction of causes of deficiencies.

(4) There shall be a system, or systems, that will feed back quality information to activities responsible for development, procurement, and other management functions so that action can be initiated to correct/prevent quality deficiencies. The Military Departments and DSA shall insure unsatisfactory material quality conditions are reported by using activities within their own logistics systems and across DoD Component lines as appropriate. DSA, in collaboration with the Military Departments, shall develop a joint regulation covering procedures and format for reporting quality data across DoD Component lines. Information and reporting requirements will be developed consistent with the policies prescribed in DoD Directive 5000.19[1] "Policies for the Management and Control of DoD Information Requirements," June 2, 1971.

(5) DoD Components shall comply with the DoD-Wide Civilian Career Program for Quality and Reliability Assurance Personnel (DoD Manual 1430.10-M-2),[2] to assure maximum employee efficiency and career growth.

(6) Quality audits of materiel, data, supplies, and services shall be conducted.

(7) Adequate and economical metrology and calibration services shall be established in support of test, measuring and diagnostic equipment used throughout the materiel life cycle. Measurement accuracies shall be traceable to U.S. National Standards maintained by the National Bureau of Standards and/or to fundamental physical constants (§ 255.4(f)) and the referral time and time interval measurements to "time standards" established by the U.S. Naval Observatory under the provisions of Part 275 of this subchapter.

(8) The institution and continuation of Zero Defects type programs shall be voluntary for both contractors and DoD Components. Handbook 4155.12H,[3] "A Guide to Zero Defects" is authorized for use as a guide.

(b) *Procurement.* (1) Contractors are responsible for (i) controlling product quality, (ii) offering to the Government for acceptance only materiel, data, supplies, and services that conform to contract requirements, and (iii) when required, maintaining and furnishing substantiating evidence of this conformance.

(2) DoD Components in accordance with assigned responsibilities shall:

(i) Assure that contracts specify appropriate quality requirements; and that contractors comply with quality requirements;

---

[1] See footnote 2 to § 255.4(d).

[2] See footnote 1 to § 255.4(c).

[3] Filed as part of the original. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402—price 20 cents.

(ii) Comply with DoD 4105.59-H[2] in assigning responsibilities for quality assurance administration of contracts.

(3) Government procurement quality assurance actions performed at the subcontract level are performed solely to assist contract administration offices in accomplishing their responsibilities. Such actions shall not relieve the contractor of any of his responsibilities under the contract and shall not establish any contractual relationship between the Government and the subcontractors.

(4) Contractor quality history data shall be maintained and used as applicable by DoD Components.

(5) The quality assurance policy contained in paragraph (b) of this section shall be implemented by Armed Services Procurement Regulation (ASPR) (Parts 1-30 of this title).

(c) *Development.* (1) Quality assurance shall be provided for early in design and development. The development function shall include assessment of the quality requirements in relation to cost, schedule and performance parameters.

(2) Prior to completion of development all specifications, standards, inspections, tests, and evaluations required to insure against degradation of performance during the production process shall be identified or developed.

(3) Calibration requirements for newly developed materiel which necessitates technical advances in the development of measuring and test equipment, measuring standards, or state-of-the-art techniques, shall be identified and programed early in development.

(d) *In-house activities*—(1) *Supply and storage.* DoD components responsible for receiving, storing, and issuing supplies will develop and implement quality assurance, including inspection (for both new and returned materiels) for identification, condition, completeness, preservation, packaging, and marking. Materiel in storage will be inspected on a planned, cyclic, surveillance basis in accordance with the needs of the commodities managed and standards prescribed by the materiel managers. Testing will be performed by Government laboratories to the optimum extent with arrangements made for commercial testing only as necessary.

(2) *Maintenance.* DoD components are responsible for providing quality assurance monitoring of in-house maintenance functions at all maintenance levels. Conversion, modification, overhaul, repair, and alteration of materiel shall be subjected to quality assurance to insure conformance to requirements.

(3) *Operations.* DoD components are responsible for maintaining the quality of performance and readiness of equipment in their possession. This responsibility includes organizing, training, equipping, and providing such quality assurance services as are necessary to assure materiel readiness.

(4) *Manufacturing.* DoD components operating manufacturing activities will assure that management action is taken to plan and develop effective and economical quality assurance for material produced. Quality assurance shall extend throughout design, development, fabrication, processing, assembly, installation, packaging, packing, and shipping. The quality assurance shall be compatible with the engineering and tooling needs of production and the related design.

(e) *Cross servicing and foreign support*—(1) *Interservice.* Part 190 of this subchapter requires that DoD Contract Administration Services Components support without charge all DoD organizations in quality assurance and related functional areas.

(2) *Foreign and non-DoD organizations.* Agreements for the acquisition of supplies and services entered into by the DoD Components with Foreign Governments and International Organizations shall provide for quality assurance in consonance with the policies stated herein. Regulations and procedures concerning quality assurance support provided to, or obtained from, non-DoD organizations, foreign governments, and international organizations, are contained in ASPR, section 14, part 6 and section 20, parts 5 and 6.

---

[2] See footnote 2 to § 255.4(d).

PART 256—AIR INSTALLATIONS COMPATIBLE USE ZONES

Sec.
256.1 Purpose.
256.2 Applicability.
256.3 Criteria.
256.4 Policy.
256.5 The air installation compatible use program.
256.6 Runway classification by aircraft type.
256.7 Accident potential zone guidelines.
256.8 Land use compatibility guidelines for accident potential.
256.9 Real estate interests to be considered for clear zones and accident potential zone.
256.10 Air installations compatible use zone noise descriptors.
256.11 Effective date and implementation.

AUTHORITY: National Security Act of 1947, as amended, 61 Stat. 495.

SOURCE: 42 FR 773, Jan. 4, 1977, unless otherwise noted.

§ 256.1 Purpose.

This part: (a) Sets forth Department of Defense policy on achieving compatible use of public and private lands in the vicinity of military airfields; (b) defines (1) required restrictions on the uses and heights of natural and man-made objects in the vicinity of air installations to provide for safety of flight and to assure that people and facilities are not concentrated in areas susceptible to aircraft accidents; and (2) desirable restrictions on land use to assure its compatibility with the characteristics, including noise, of air installations operations; (c) describes the procedures by which Air Installations Compatible Use Zones (AICUZ) may be defined; and (d) provides policy on the extent of Government interest in real property within these zones which may be retained or acquired to protect the operational capability of active military airfields (subject in each case to the availability of required authorizations and appropriations).

§ 256.2 Applicability.

This part applies to air installations of the Military Departments located within the United States, its territories, trusts, and possessions.

§ 256.3 Criteria.

(a) *General.* The Air Installations Compatible Use Zone for each military air installation shall consist of (1) land areas upon which certain uses may obstruct the airspace or otherwise be hazardous to aircraft operations, and (2) land areas which are exposed to the health, safety or welfare hazards of aircraft operations.

(b) *Height of obstructions.* The land area and height standards defined in AFM 86-8,[1] NavFac P-272 and P-80,[1] and TM 5-803-4 [1] will be used for purposes of height restriction criteria.

(c) *Accident potential*—(1) *General.* (i) Areas immediately beyond the ends of runways and along primary flight paths are subject to more aircraft accidents than other areas. For this reason, these areas should remain undeveloped, or if developed should be only sparsely developed in order to limit, as much as possible, the adverse effects of a possible aircraft accident.

(ii) DoD fixed wing runways are separated into two types for the purpose of defining accident potential areas. Class A runways are those restricted to light aircraft (See § 256.6) and which do not have the potential for development for heavy or high performance aircraft use or for which no foreseeable requirement for such use exists. Typically these runways have less than 10% of their operations involving Class B aircraft (§ 256.6) and are less than 8000 feet long. Class B runways are all other fixed wing runways.

(iii) The following descriptions of Accident Potential Zones are guidelines only. Their strict application would result in increasing the safety of the general public but would not provide complete protection against the effects of aircraft accidents. Such a degree of protection is probably impossible to achieve. Local situations may differ significantly from the assumptions and data upon which these guidelines are based and require individual study. Where it is desirable to restrict the density of development of an area, it is not usually possible to state that one density is safe and another is not. Safety is a relative term and the objective should be the realization of the greatest degree of safety that can be reasonably attained.

---

[1] Filed as part of original. Copies available in the Office of the Assistant Secretary of Defense (Installations and Logistics)—ID, Washington, D.C. 20301.

(2) *Accident potential and clear zones (See § 256.7).* (i) The area immediately beyond the end of a runway is the "Clear Zone", an area which possesses a high potential for accidents, and has traditionally been acquired by the Government in fee and kept clear of obstructions to flight.

(ii) Accident Potential Zone I (APZ I) is the area beyond the clear zone which possesses a significant potential for accidents.

(iii) Accident Potential Zone II (APZ II) is an area beyond APZ I having a measurable potential for accidents.

(iv) Modifications to APZs I and II will be considered if:

(A) The runway is infrequently used.

(B) The prevailing wind conditions are such that a large percentage (i.e., over 80 percent) of the operations are in one direction.

(C) Most aircraft do not overfly the APZs as defined herein during normal flight operations (modifications may be made to alter these zones and adjust them to conform to the line of flight).

(D) Local accident history indicates consideration of different areas.

(E) Other unusual conditions exist.

(v) The takeoff safety zone for VFR rotary-wing facilities will be used for the clear zone; the remainder of the approach-departure zone will be used as APZ I.

(vi) Land use compatibility with clear zones and APZs is shown in § 256.8.

(d) *Noise*—(1) *General.* Noise exposure is described in various ways. In 1964, the Department of Defense began using the Composite Noise Rating (CNR) system to describe aircraft noise. Several years ago the Noise Exposure Forecast (NEF) system began to replace CNR. In August 1974, the Environment Protection Agency notified all Federal agencies of intent to implement the Day-Night Average Sound Level (Ldn) noise descriptor, and this was subsequently adopted by the DoD. This Ldn system will be used for air installations. Where AICUZ studies have been published using the CNR of NEF systems or where studies have progressed to the point that a change in the descriptor system is impractical or uneconomical, such studies may be published and continued in use. However, in such cases, data necessary for conversion to Ldn should be collected and studies should be revised as soon as time and budgetary considerations permit. However, if State or local laws require some other noise descriptor, it may be used in lieu of Ldn.

(2) *Noise Zones.* (i) As a minimum, contours for Ldn 65, 70, 75 and 80 shall be plotted on maps as part of AICUZ studies.

(ii) See § 256.10 for a further discussion of Ldn use and conversion to Ldn from previously used systems.

§ 256.4 Policy.

(a) *General.* As a first priority step, all reasonable, economical, and practical measures will be taken to reduce and/or control the generation of noise from flying and flying related activities. Typical measures normally include siting of engine test and runup facilities in remote areas if practical, provision of sound suppression equipment where necessary, and may include additional measures such as adjustment of traffic patterns to avoid built-up areas where such can be accomplished with safety and without significant impairment of operational effectiveness. After all reasonable noise source control measures have been taken, there will usually remain significant land areas wherein the total noise exposure is such as to be incompatible with certain uses.

(b) *Compatible use land*—(1) *General.* (i) DoD policy is to work toward achieving compatibility between air installations and neighboring civilian communities by means of a compatible land use planning and control process conducted by the local community.

(ii) Land use compatibility guidelines will be specified for each Clear Zone, Accident Potential Zone, Noise Zone and combination of these as appropriate.

(iii) The method of control and regulation of land usage within each zone will vary according to local conditions. In all instances the primary objective will be to identify planning areas and reasonable land use guidelines which will be recommended to appropriate agencies who are in control of the planning functions for the affected areas.

(2) *Property rights acquisition*—(i) *General.* While noise generated by aircraft at military air installations should be an integral element of land use compatibility efforts, the acquisition of property rights on the basis of noise by the Department of Defense may not be in the long term best interests of the United States. Therefore, while the complete requirement for individual installations should be defined prior to any programming actions, acquisition of interests should be programmed in accordance with the following priorities.

(ii) *Priorities.* (A) The first priority is the acquisition in fee and/or appropriate restrictive easements of lands within the clear zones whenever practicable.

(B) Outside the clear zone, program for the acquisition of interests, first in Accident Potential Zones and secondly in high noise areas only when all possibilities of achieving compatible use zoning, or similar protection, have been exhausted and the operational integrity of the air installation is manifestly threatened. If programming actions are considered necessary, complete records of all discussions, negotiations, testimony, etc., with or before all local officials, boards, etc., must be maintained. This will ensure that documentation is available to indicate that all reasonable and prudent efforts were made to preclude incompatible land use through cooperation with local governmental officials and that all recourse to such action has been exhausted. Such records shall accompany programming actions and/or apportionment requests for items programmed prior to the date of this part. In addition, a complete economic analysis and assessment of the future of the installation must be included.

(*1*) Costs of establishing and maintaining compatible use zones must be weighed against other available options, such as changing the installation's mission and relocating the flying activities, closing the installation, or such other courses of action as may be available. In performing analyses of this type, exceptional care must be exercised to assure that a decision to change or relocate a mission is fully justified and that all aspects of the situation have been thoroughly considered.

(*2*) When, as a result of such analysis, it is determined that relocation or abandonment of a mission will be required, then no new construction shall be undertaken in support of such activities except as is absolutely necessary to maintain safety and operational readiness pending accomplishment of the changes required.

(iii) *Guidelines.* This part shall not be used as sole justification for either the acquisition or the retention of owned interests beyond the minimum required to protect the Government.

(A) Necessary rights to land within the defined compatible use area may be obtained by purchase, exchange, or donation, in accordance with all applicable laws and regulations.

(B) If fee title is currently held or subsequently acquired in an area where compatible uses could be developed and no requirement for a fee interest in the land exists except to prevent incompatible use, disposal actions shall normally be instituted. Only those rights and interests necessary to establish and maintain compatible uses shall be retained. Where proceeds from disposal would be inconsequential, consideration may be given to retaining title.

(C) If the cost of acquiring a required interest approaches closely the cost of fee title, consideration shall be given to whether acquisition of fee title would be to the advantage of the Government.

(c) ***Rights and interests which may be obtained.*** When it is determined to be necessary for the Federal Government to acquire interests in land, a careful assessment of the type of interest to be acquired is mandatory. **§ 256.9** contains a listing of possible interests which should be examined for applicability.

(d) *Environmental impact statements.* (1) Any actions taken with respect to safety of flight, accident hazard, or noise which involve acquisition of interests in land must be examined to determine the necessity of preparing an environmental impact statement in accordance with DoD Directive 6050.1, "Environmental Considerations in DoD Actions," March 19, 1974 (32 CFR Part 214).

(2) All such environmental impact statements must be forwarded to appropriate Federal and local agencies for review in accordance with DoD Directive 6050.1 (32 CFR Part 214).

(3) Coordination with local agencies will be in accordance with OMB Circular A 95.

§ 256.5 The air installation compatible use program.

(a) The Secretaries of the Military Departments will develop, implement and maintain a program to investigate and study all air installations in necessary order of priority to develop an Air Installation Compatible Use Zone (AICUZ) program for each air installation consistent wth § 256.4. AICUZ studies which contain an analysis of land use compatibility problems and potential solutions shall be developed and updated as necessary. As a minimum, each Study shall include the following:

(1) Determination by detailed study of flight operations, actual noise and safety surveys if necessary, and best available projections of future flying activities, desirable restrictions on land use due to noise characteristics and safety of flight;

(2) Identification of present incompatible land uses;

(3) Identification of land that if inappropriately developed would be incompatible;

(4) Indication of types of desirable development for various land tracts;

(5) Land value estimates for the zones in question.

(6) Review of the airfield master plans to ensure that existing and future facilities siting is consistent with the policies in this part.

(7) Full consideration of joint use of air installations by activities of separate Military Departments whenever such use will result in maintaining operational capabilities while reducing noise, real estate and construction requirements.

(8) Recommendations for work with local zoning boards, necessary minimum programs of acquisition, relocations, or such other actions as are indicated by the results of the Study.

(b) *Procedures.* In developing AICUZ Studies the Secretaries of Military Departments shall:

(1) Follow the review and comment procedures established under OMB Circular A-95;

(2) Ensure that appropriate environmental factors are considered; and

(3) Ensure that other local, State or Federal agencies engaged in land use planning or land regulation for a particular area have an opportunity to review and comment upon any proposed plan or significant modification thereof.

(c) *Coordination with State and local governments.* Secretaries of the Military Departments shall develop procedures for coordinating AICUZ Studies with the land use planning and regulatory agencies in the area. Developing compatible land use plans may require working with local governments, local planning commissions, special purpose districts, regional planning agencies, state agencies, state legislatures, as well as the other Federal agencies. Technical assistance to local, regional, and state agencies to assist them in developing their land use planning and regulatory processes, to explain an AICUZ Study and its implications, and generally to work toward compatible planning and development in the vicinity of military airfields, should be provided.

(d) *Property rights acquisition.* The AICUZ Study shall serve as the basis for new land acquisitions, property disposal, and other proposed changes in Military Departments real property holdings in the vicinity of military airfields where applicable.

(e) *Required approvals.* Based on the results of the AICUZ Studies, each Military Department will prepare recommendations for individual installations AICUZ programs for approval as follows:

BEST COPY AVAILABLE

(1) The Secretaries of the Military Departments or their designated representatives will review and approve the AICUZ Studies establishing the individual air installation AICUZ program.

(2) When relocation or abandonment of a mission or an installation is apparently required, the Secretaries of the Military Departments will submit the proposed plan for the installation, with appropriate recommendations, to the Secretary of Defense for approval.

(3) A time-phased fiscal year plan for implementation of the AICUZ program in priority order, consistent with budgetary considerations, will be developed for approval by the Secretaries of the Military Departments, or their designated representatives. These plans will serve as the basis for all AICUZ actions at the individual installations.

(f) *Coincident actions.* The Secretaries of the Military Departments will also take action to assure in accordance with § 256.4 (a) and (b) that:

(1) As the first priority action in developing an AICUZ program, full attention is given to safety and noise problems.

(2) In all planning, acquisition and siting of noise generating items, such as engine test stands, full advantage is taken of available alleviating measures, such as remote sites or sound suppression equipment.

(3) The noise exposure of on-installation facilities and personnel are considered together with that off the installation.

(4) There is development or continuation with renewed emphasis, of programs to inform local governments, citizens groups, and the general public of the requirements of flying activities, the reasons therefore, the efforts which may have been made or may be taken to reduce noise exposure, and similar matters which will promote and develop a public awareness of the complexities of air installation operations, the problems associated therewith, and the willingness of the Department of Defense to take all measures possible to alleviate undesirable external effects.

(g) Responsibilities for the acquisition, management and disposal of real property are defined in DoD Directive 4165.6, "Real Property; Acquisition, Management and Disposal," September 15, 1955 (20 FR 7113).

(h) The Deputy Assistant Secretary of Defense (Installations and Housing) will examine the program developed pursuant to this Part, and from time to time review the progress thereunder to assure conformance with policy.

§ 256.6 Runway classification by aircraft type.

Class A runways

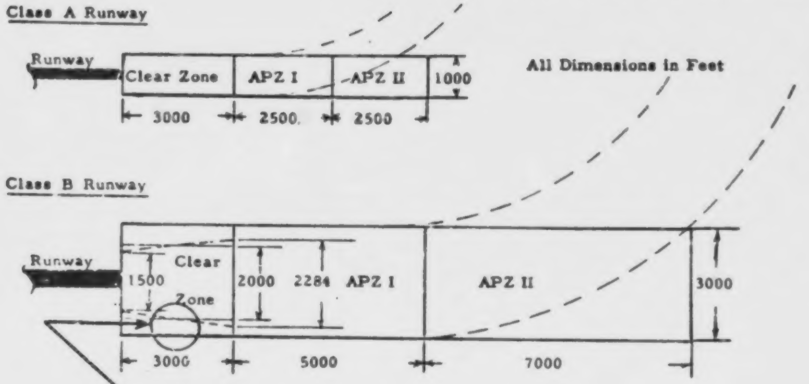
S-2, VC-6, C-1, C-2, TC-4C, U-10, U-11, LU-16, TU-16, HU-16, C-7, C-8, C-12, C-47, C-117, U-21, QU-22, E-1, E-2, O-1, U-1, U-3, U-6, U-8, U-9, O-2, OV-1, OV-10, T-28 T-34, T-41, T-42.

Class B runways

A-1, A-3, A-4, A-5, A-6, F-106, F-5, F-15, F-18, S-3, C-121, EC-121, WC-121, C-123, C-130, A-7, A-38, AV-8, P-2, P-3, T-29, T-33, T-37, T-39, T-1, HC-130B, C-131, C-140, C-5A, KC-97, F-9, F-14, F-4, F-8, F-111, T-2, T-38, B-52, B-57, B-57F, C-124, EC-130E, HC-130, C-135, VC-137, YF-12, SR-71, F-100, F-101, F-102, B-66, C-9, C-54, C-97, C-118, C-141, KC-135, EC-135, RC-135, U-2, F-104, F-105, C-119.

[42 FR 13022, Mar. 8, 1977]

§ 256.7 Accident potential zone guidelines.



Width of clear zone may be based on individual service analysis of highest accident potential area for specific runway use and varied based on acquisition constraints. 3000 foot wide clear zone is desirable for new construction.

§ 256.8 Land use compatibility guidelines for accident potential.

ZONES AND FOOTNOTES—LAND USE CATEGORY

[See footnotes at end of table]

	Compatibility [1]		
	Clear zone	APZ I	APZ II
Residential			
Single family	No	No	Yes [2]
2 to 4 family	do	do	No
Multifamily dwellings	do	do	Do
Group quarters	do	do	Do
Residential hotels	do	do	Do
Mobile home parks or courts	do	do	Do
Other residential	do	do	Do
Industrial manufacturing [3]			
Food and kindred products	do	do	Yes
Textile mill products	do	do	Do
Apparel	do	do	No
Lumber and wood products	do	Yes	Do
Furniture and fixtures	do	do	Do
Paper and allied products	do	do	Do
Printing, publishing	do	do	Do
Chemicals and allied products	do	No	No
Petroleum refining and related industries	do	do	Do
Rubber and miscellaneous plastic goods	do	do	Do
Stone, clay, and glass products	do	Yes	Yes
Primary metal industries	do	do	Do
Fabricated metal products	do	do	Do
Professional, scientific and controlling instruments	do	No	No
Miscellaneous manufacturing	do	Yes	Yes
Transportation, communications and utilities [4]			
Railroad, rapid rail transit (on-grade)	Yes	Yes [4]	Yes
Highway and street ROW	do	Yes	Do
Auto parking	No	do	Do
Communication	Yes	do	Do
Utilities	do	Yes [4]	Do
Other transportation, communications and utilities	do	Yes	Do
Commercial/retail trade			
Wholesale trade	No	do	Do
Building materials—retail	do	do	Do
General merchandise—retail	do	No	Do

ZONES AND FOOTNOTES—LAND USE CATEGORY—Continued

[See footnotes at end of table]

	Compatibility[1]		
	Clear zone	APZ I	APZ II
Food—retail	do	do	Do.
Automotive, marine, aviation—retail.	do	Yes	Do.
Apparel and accessories—retail	do	No	Do
Furniture, homefurnishing—retail	do	do	Do.
Eating and drinking places	do	do	No.
Other retail trade	do	do	Yes.
Personal and business services:[5]			
Finance, insurance and real estate	do	do	Do.
Personal services	do	do	Do
Business services	do	do	Do
Repair services	do	Yes	Do.
Professional services	do	No	Do
Contract construction services	do	Yes	Do.
Indoor recreation services	do	No	Do.
Other services	do	do	Do
Public and quasi-public services:			
Government service	do	do	Yes[5]
Educational services	No	No	No
Cultural activities	do	do	Do.
Medical and other health services.	do	do	Do
Cemeteries	do	Yes[6]	Yes[6]
Nonprofit organization including churches.	do	No	No.
Other public and quasi-public services.	do	do	Yes.
Outdoor recreation			
Playground's neighboring parks	do	do	Yes.
Community and regional parks	do	Yes[7]	Yes[7]
Nature exhibits	do	Yes	Yes
Spectator sports including arenas.	do	No	No.
Golf course,[8] riding stables[9]	do	Yes	Yes
Water based recreational areas	do	do	Do.
Resort and group camps	do	No	No.
Entertainment assembly	do	do	Do.
Other outdoor recreation	do	Yes[7]	Yes.
Resource production and extraction and open land:			
Agriculture[10]	Yes	Yes	Do
Livestock farming, animal breeding[11].	No	do	Do.
Forestry activities[12]	No[13]	Yes	Do.
Fishing activities and related services[14]	No[15]	Yes[14]	Do.
Mining activities	No	Yes	Do
Permanent open space	Yes	do	Do.
Water areas[14]	do	do	Do.

Footnotes.

[1] A "Yes" or "No" designation for compatible land use is to be used only for gross comparison. Within each, uses exist where further definition may be needed as to whether it is clear or normally acceptable/unacceptable owing to variations in densities of people and structures.

[2] Suggested maximum density 1-2 DU/AC, possibly increased under a planned unit development where maximum lot covered less than 20 percent.

[3] Factors to be considered: Labor intensity, structural coverage, explosive characteristics, air pollution.

[4] No passenger terminals and no major above ground transmission lines in APZ I.

[5] Low intensity office uses only. Meeting places, auditoriums, etc., not recommended.

[6] Excludes chapels.

[7] Facilities must be low intensity.

[8] Clubhouse not recommended.

[9] Concentrated rings with large classes not recommended.

[10] Includes livestock grazing but excludes feedlots and intensive animal husbandry.

[11] Includes feedlots and intensive animal husbandry.

[12] No structures (except airfield lighting), buildings or above ground utility/communication lines should be located in the clear zone. For further runway safety clearance limitations pertaining to the clear zone see AFM 86-6 TM 5-803-4 and NAVFAC P-80.[2]

[13] Lumber and timber products removed due to establishment, expansion or maintenance of clear zones will be disposed of in accordance with DoD Instruction 4170.7, "Natural Resources—Forest Management," June 21, 1965 (32 CFR 233) and DoD Instruction 7310.1, "Accounting and Reporting for Property Disposal and Proceeds from Sale of Disposable Personal Property and Lumber or Timber Products," July 10, 1970.[1]

[14] Includes hunting and fishing.

[15] Controlled hunting and fishing may be permitted for the purpose of wildlife control.

§ 256.9 Real estate interests to be considered for clear zones and accident potential zone.

(a) The right to make low and frequent flights over said land and to generate noises associated with:

(1) Aircraft in flight, whether or not while directly over said land,

(2) Aircraft and aircraft engines operating on the ground at said base, and,

(3) Aircraft engine test/stand/cell operations at said base.

(b) The right to regulate or prohibit the release into the air of any substance which would impair the visibility or otherwise interfere with the operations of aircraft, such as, but not limited to, steam, dust and smoke.

(c) The right to regulate or prohibit light emissions, either direct or indirect (reflective), which might interfere with pilot vision.

(d) The right to prohibit electrical emissions which would interfere with aircraft and aircraft communications systems or aircraft navigational equipment.

(e) The right to prohibit any use of the land which would unnecessarily attract birds or waterfowl, such as, but not limited to, operation of sanitary landfills, maintenance of feeding stations or the growing of certain types of vegetation attractive to birds or waterfowl.

(f) The right to prohibit and remove any buildings or other non-frangible structures.

(g) The right to top, cut to ground level, and to remove trees, shrubs, brush or other forms of obstruction which the installation commander determines might interfere with the operation of aircraft, including emergency landings.

(h) The right of ingress and egress upon, over and across said land for the purpose of exercising the rights set forth herein.

(i) The right to post signs on said land indicating the nature and extent of the Government's control over said land.

(j) The right to prohibit land uses other than the following:

(1) Agriculture.

(2) Livestock grazing.

(3) Permanent open space.

(4) Existing water areas.

(5) Rights of way for fenced two lane highways, without sidewalks or bicycle trails and single track railroads.

(6) Communications and utilities rights of way, provided all facilities are at or below grade.

(k) The right to prohibit entry of persons onto the land except in connection with activities authorized under paragraphs (a), (b), (c), and (f) of this section.

(l) The right to disapprove land uses not in accordance with § 256.8.

(m) The right to control the height of structures to insure that they do not become a hazard to flight.

(n) The right to install airfield lighting and navigational aids.

§ 256.10 Air installations compatible use zone noise descriptors.

(a) Composite Noise Rating (CNR) and Noise Exposure Forecast (NEF) values as previously required by Sections III., IV., and V. of DoD Instruction 4165.57, "Air Installations Compatible Use Zones," July 30, 1973 [1] will no longer be used.

(b) Where CNR 100 (or the quietest boundary of CNR Zone 2 if otherwise computed) or NEF 30 would previously have been used, data shall be collected sufficient to permit computation of Ldn 65 noise contours and these noise contours shall be plotted on maps accompanying AICUZ studies.

(c) Where CNR 115 (or the boundary of CNR Zone 3 if otherwise computed) or NEF 40 would previously have been used, data shall be collected sufficient to permit computation of Ldn 75 noise contours and these noise contours shall be plotted on maps accompanying AICUZ studies.

(d) Where previous studies have used CNR or NEF, for meters of policy, noise planning and decision-making, areas quieter than Ldn 65 shall be considered approximately equivalent to the previously used CNR Zone 1 and to areas quieter than NEF 30. The area between Ldn 65 and Ldn 75 shall be considered approximately equivalent to the previously used CNR Zone 2 and to the area between NEF 30 and NEF 40. The area of higher noise than Ldn 75 shall be considered approximately equivalent to the previously used CNR Zone 3 and to noise higher the NEF 40. The procedures shall remain in effect only until sufficient data to compute land values can be obtained.

(e) When computing helicopter noise levels using data collected from meters, a correction of +7db shall be added to meter readings obtained under conditions where blade slap was present until and unless matters are developed which more accurately reflect true conditions.

---

[1] Filed as part of original. Copies available in the Office of the Assistant Secretary of Defense (Installations and Logistics)—IO, Washington, D.C. 20301.

(f) Noise contours less than Ldn 65 or more than Ldn 80 need not be plotted for AICUZ studies.

(g) Since CNR noise levels are not normally directly convertible to Ldn values without introducing significant error, care should be exercised to assure that personnel do not revise previous studies by erroneously relabeling CNR contours to the approximately equivalent Ldn values.

(h) Where intermittent impulse noises are such as are associated with bombing and gunnery ranges are of importance such noises will be measured using standard "C" weighing of the various frequencies to insure a description most representative of actual human response.

§ 256.11 Effective date and implementation.

This part is effective immediately. Two copies of implementing regulations shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) within 90 days after publication of final rules.

PART 257—ACCEPTANCE OF SERVICE OF PROCESS

Sec.

257.1 Purpose.
257.2 Applicability.
257.3 Definition.
257.4 Policy.
257.5 Responsibilities.

AUTHORITY: 5 U.S.C. 301, 133.

SOURCE: 49 FR 1490, Jan. 12, 1984, unless otherwise noted.

§ 257.1 Purpose.

This rule updates DoD policy governing acceptance of service of process served on the Secretary of Defense and the Secretaries of the Military Departments.

§ 257.2 Applicability.

This rule applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 257.3 Definition.

Service of Process. When applied to the filing of a court action against an officer or agency of the United States, service of process refers to the delivery or, when appropriate, receipt by mail, of a summons and complaint made in accordance with Rule 4, Federal Rules of Civil Procedure by serving the United States and by serving a copy of the summons and complaint by registered or certified mail to such officer or agency. It further signifies the delivery of a subpoena requiring a witness to appear and give testimony or of a subpoena requiring production of documents, or delivery of a subpoena for any other reason whether or not the matter involves the United States.

§ 257.4 Policy.

It is DoD policy to accept service of process directed to the Secretary of Defense or a Secretary of a Military Department in his official capacity. Acceptance of service of process will not constitute an admission or waiver with respect to the jurisdiction or to the propriety of service.

§ 257.5 Responsibilities.

The following responsibilities may not be redelegated:

(a) The *General Counsel, Department of Defense,* shall accept service of process for the OSD.

(b) The *Secretary of the Army,* or his designee, the *Chief, Litigation Division,* Office of the Judge Advocate General, shall accept service of process for the Department of the Army.

(c) The *Secretary of the Navy,* or his designee, the *General Counsel,* shall accept service of process for the Department of the Navy.

(d) The *Secretary of the Air Force,* or his designee, the *Chief, General Litigation Division,* Office of the Judge Advocate General, shall accept service of process for the Department of the Air Force.

PART 258—COOPERATION WITH ALLIES IN RESEARCH AND DEVELOPMENT OF DEFENSE EQUIPMENT

Sec.

258.1 Purpose.
258.2 Background.
258.3 Policy.
258.4 Criteria.
258.5 Procedures.
258.6 Responsibilities and authorities.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 33 FR 13024, Sept. 14, 1968, unless otherwise noted.

§ 258.1 Purpose.

It is the purpose of this part to specify Defense Department policy for strengthening cooperation with Allies in research and development and to assign responsibilities for implementing it. This policy calls for maximum coordination of technical objectives and programs with those of our allies. It complements DoD Directive 3100.4, Harmonization of Qualitative Requirements for Defense Equipment of United States and Allies.[1]

§ 258.2 Background.

Cooperation in defense research and development between the United States and its Allies since World War II has been aimed primarily at assisting them, financially as well as technically, in developing indigenous capabilities. The economic status of certain of these Allies has now evolved beyond the point of warranting further financial assistance. However, the evolution of modern weapons of increasing cost and complexity makes the effective utilization of the aggregate of available technical resources a matter of concern to each nation.

§ 258.3 Policy.

(a) The United States will cooperate with its Allies to the greatest degree possible in the development of defense equipment, where such cooperation is in the overall best interests of the United States. The objectives of such cooperation will be:

(1) To make the best equipment available to the United States and its Allies in the most timely manner.

(2) To increase the effectiveness of the scientific and technical resources of the United States and its Allies, especially by eliminating unnecessary and wasteful duplication of effort.

(3) To achieve the maximum practicable degree of standardization of equipment.

(4) To create closer military ties among the Alliance.

(b) The United States will seek to enter in bilateral and multilateral agreements with its allies that will minimize waste resulting from purely duplicative R&D programs and, within the criteria stated in § 258.4, encourage the establishment of a mutually acceptable free, fully competitive market for defense R&D. To this effect, the DoD will:

(1) Continue to encourage the mutual development of technical capabilities, in particular through exchanges of significant information.

(2) Coordinate exploratory, advanced and engineering development plans to minimize wasteful duplication.

(3) Participate in joint development programs for major systems meeting harmonized requirements, whenever such programs meet the objectives and criteria listed in this part.

(4) Consistent with OSD guidance, consider promising foreign as well as U.S. R&D resources prior to placing research and development contracts.

(5) Facilitate availability of U.S. R&D resources to foreign procurement agencies, on terms similar to those governing availability of these resources to U.S. agencies.

(c) Necessary release of classified information will be in accordance with the provisions of the National Disclosure Policies.

§ 258.4 Criteria.

(a) The general criteria for such cooperation will be:

(1) Except for MAP "grant-aid countries," no appropriations available to the DoD will be used to finance the foreign research and development effort unless the program is aimed at

---

[1] Copies available from Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120; Attn.: Code 300.

satisfying a United States military need.

(2) Except for MAP "grant-aid countries," cooperative R&D programs will be funded by Service RDT&E funds.

(3) U.S. participation in jointly funded development programs will not be approved unless the United States receives design and production rights equivalent to those secured from domestic sources.

(b) International balance-of-payments considerations have resulted in the establishment of certain specific restrictions pertinent to DoD overseas activities, including those relating to foreign R&D. The screening and selection of proposed R&D projects must be consistent with these restrictions. In this connection, preference should be given to the following types of joint R&D undertakings:

(1) Projects that provide for the investment of foreign funds in U.S. R&D activities under mutually acceptable terms and conditions.

(2) Projects that offer the U.S. good prospects for the ultimate sale of the end item or associated components to second and third foreign parties.

(3) Projects that capitalize on the unique technical state-of-the-art capabilities existing in a foreign country and offer prospects of saving the U.S. time and money in the R&D and production field.

(4) Projects that enable the United States to assist and/or accommodate a foreign second party to accomplish joint R&D objectives without jeopardizing U.S. aspirations to promote future U.S. sales to third countries.

§ 258.5 Procedures.

Procedures for accomplishing and administering the cooperative programs and projects will be integrated into DoD management systems so that decisions concerning national and international programs will be made by the same individuals.

§ 258.6 Responsibilities and authorities.

(a) The Military Departments are charged with the primary responsibility for implementing this part.

(b) The Director of Defense Research and Engineering will be responsible for monitoring the implementation of this part. He will:

(1) Negotiate basic policy agreements with foreign Ministries of Defense as appropriate.

(2) Consult with the Joint Chiefs of Staff on the interaction of research and development and strategic doctrines.

(3) Seek formal statements of military operational requirements from the Military Departments or the JCS, as appropriate, for research and development projects and equipment areas which require such statements.

(4) Recommend to the Secretary of Defense policy guidance and appropriate instructions for the Military Departments to assure consistency of their actions and conformity with National Policy.

(5) Continually review progress made towards the objectives of this part.

(6) Request policy guidance and support from Assistance Secretaries of Defense (ISA) (I&L) (Comp), and the General Counsel on matters within their respective fields of responsibility.

(c) The Defense Advisor U.S. Mission to the North Atlantic Treaty Organization will assist the Director of Defense Research and Engineering, as directed, in supervising the implementation of this part.

(d) Military Assistance Advisory Groups and Missions will provide advice and assistance to the Military Departments as requested and within the limits of availability of assigned resources. Those MAAGs and Missions within the North Atlantic Treaty Organization areas will provide advice and assistance to the Defense Advisor U.S. NATO when requested.

PART 259—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.
259.1 Purpose.
259.2 Definitions.
259.3 No duplication of payments.
259.4 Assurances, monitoring and corrective action.

BEST COPY AVAILABLE

Sec.
259.5 Manner of notices.
259.6 Administration of jointly-funded projects.
259.7 Federal agency waiver of regulations.
259.8 Compliance with other laws and regulations.
259.9 Recordkeeping and reports.
259.10 Appeals.

Subpart B—Real Property Acquisition

259.101 Applicability of acquisition requirements.
259.102 Basic acquisition policies.
259.103 Criteria for appraisals.
259.104 Review of appraisals.
259.105 Acquisition of tenant-owned improvements.
259.106 Expenses incidental to transfer of title to the agency.
259.107 Certain litigation expenses.
259.108 Donations.

Subpart C—General Relocation Requirements

259.201 Purpose.
259.202 Applicability.
259.203 Relocation notices.
259.204 Availability of comparable replacement dwelling prior to displacement.
259.205 Relocation assistance advisory services.
259.206 Eviction for cause.
259.207 General requirements—claims for relocation payments.
259.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

259.301 Payments for actual reasonable moving and related expenses—residential moves.
259.302 Fixed payment for moving expenses—residential moves.
259.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
259.304 Fixed payment for moving expenses—nonresidential moves.
259.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payment

259.401 Replacement housing payments for 180-day homeowner-occupants.
259.402 Replacement housing payments for 90-day occupants.
259.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

259.501 Applicability.
Sec.
259.502 Moving and related expenses—mobile homes.
259.503 Replacement housing payments for 180-day mobile home occupants.
259.504 Replacement housing payments for 90-day mobile home occupants.
259.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

259.601 Applicability.
259.602 Methods of providing replacement housing.
APPENDIX A—ADDITIONAL INFORMATION
APPENDIX B—STATISTICAL REPORT FORM

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

SOURCE: 51 FR 7013 and 7022, Feb 27, 1986, unless otherwise noted.

Subpart A—General

§ 259.1 Purpose.

The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

§ 259.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State or State agency which acquires the real property or displaces a person (see § 259.2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 259.303 of these regulations, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 259.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 259.403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 259.401(c), all increased mortgage interest costs as described at § 259.401(d) (for last resort housing see Appendix A, § 259.602) and all incidental expenses as described at § 259.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exeed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A, § 259.402(b)(1)).

(iii) Whenever a $15,000 replacement housing payment under § 259.401 or a $4,000 replacement housing payment under § 259.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) ***Displaced person***—(1) *General.* The term "displaced person" means any person (defined at § 259.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at § 259.2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property on which the person conducts a business or farm operation. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services under § 259.205 and moving expenses under § 259.302, or § 259.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

(i) A person who moves before the initiation of negotiations (see also § 259.403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § 259.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § 259.101(a) in Appendix A) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 259.505(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (l) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisidictions.

(p) *State agency.* The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

§ 259.3 No duplication of payments.

No person shall receive any payment under these regulations if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under these regulations. (See Appendix A, § 259.3.)

§ 259.4 Assurances, monitoring and corrective action.

(a) *Assurances.* Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and these regulations. A State agency's assurances under section 305 of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with these regulations, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

§ 259.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under these regulations, except the notice described at § 259.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 259.6 Administration of jointly funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and these regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

§ 259.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 259.8 Compliance with other laws and regulations.

The implementation of these regulations shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

§ 259.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with these regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under these regulations.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under these regulations if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

§ 259.10 Appeals

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and these regulations.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 259.106 or § 259.107, or a relocation payment required under these regulations. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 30 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classsified as confidential by the Agency. The Agency may, however, impose resonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 259.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this Subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A, § 259.101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A, § 259.101 (b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ 259.102, 259.103, 259.104, and 259.105 apply to the extent practicable under State law. (See § 259.4 (a).)

§ 259.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations. (See also § 259.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 259.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building

equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 259.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or offer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trail costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) In the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 259.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, and adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevent physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 259.2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 259.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they met applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obatin an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 259.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 259.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 259.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 259.106 Expenses incidental to transfer of title to the Agency.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner not will have to pay such costs and then seek reimbursement from the Agency.

§ 259.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 259.108 Donations.

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ 259.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part.

§ 259.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 259.2(f).

§ 259.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 259.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 259.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 259.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 259.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes for filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 259.205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this Section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and perferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 259.204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 259.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 259.2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocated to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ 259.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ 259.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one diplsacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 259.204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 259.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 259.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 259.2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling

BEST COPY AVAILABLE

relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 259.305, as the Agency determines to be reasonable and necessary.

§ 259.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § 259.301, that consists of:

(a) A moving expense allowance not to exceed $300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and

(b) A dislocation allowance of $200.

§ 259.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 259.2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 259.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held

BEST COPY AVAILABLE

for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 259.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 259.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 259.304 Fixed payment for moving expenses—Nonresidential moves.

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. The displaced business is eligible for the payment if the Agency determined that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 259.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 259.2(h) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of $2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 259.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under § 259.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 259.303(a)(3); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

SUBPART E—REPLACEMENT HOUSING PAYMENTS

§ 259.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $15,000. (See also § 259.403(b).) The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 259.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.)

BEST COPY AVAILABLE

shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 259.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacemet dwelling (defined at § 259.2(e)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A, § 259.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The amount to be paid under § 259.401(b)(2) is the sum of the present value of the following two items: The increase in interest costs that result when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling, and other debt service costs. The following rules apply to the computation:

(1) The payment shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.

(2) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent—

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary.

The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 259.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 259.401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $4,000, computed and disbursed in accordance with § 259.402(b).

§ 259.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $4,000 for rental assistance. (See also § 259.403(b).) Such payment shall be 48 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a payment for downpayment assistance not to exceed $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses (see § 259.401(e)) plus one-half of any amount required over $2,000, provided that the displaced person matches equally the amount in excess of $2,000. A displaced person eligible to receive a replacement housing payment for a 180-day homeowner-occupant under § 259.401 is not eligible for this payment.

(2) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the Agency determines is necessary for the downpayment.

(3) *Application of payment.* The full amount of the replacement housing

payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 259.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 259.2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 259.205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a $15,000 replacement housing payment under § 259.401 or a $4,000 replacement housing payment under § 259.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § 259.2(c)(6)).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 259.2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under

§ 259.402(b) is eligible to receive a payment under § 259.401 or § 259.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 259.401 or § 259.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ 259.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of these regulations. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 259.502 Moving and related expenses—Mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 259.301 or, as an alternative, on the basis of a fixed payment under § 259.302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 259.503(c), the owner is not eligible for payment for moving the mobile home.) The following rules apply to payments for actual moving expenses under § 259.301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 259.503 Replacement housing payment for 180-day mobile homeowner-occupants.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $15,000, under § 259.401 if:

(a) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 259.401(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the

Agency determines that the mobile home:

(1) Is not and cannot economically be made decent, safe, and sanitary; or

(2) Cannot be relocated without substantial damage or unreasonable cost; or

(3) Cannot be relocated because there is no available comparable replacement site; or

(4) Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 259.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 259.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment not to exceed $4,000, under § 259.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 259.402(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 259.503(c).

§ 259.505 Additional rules governing relocation payment to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $15,000 or $4,000) permitted under the section that governs the computation for the dwelling. (See also § 259.403(b).)

(b) *Cost of comparable replacement dwelling*—(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 259.401(c), the cost of a comparable replacement dwelling is the sum of—

(i) The value of the mobile home;

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under these regulations.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under these regulations.

Subpart G—Last Resort Housing

§ 259.601 Applicability.

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this subpart.

(a) *Basic rights of persons to be displaced.* The provisions of this subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § 259.401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. (See Appendix A, § 259.601(b).)

§ 259.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(d) A replacement housing payment in excess of the limits set forth in § 259.401 or § 259.402. A rental assistance subsidy under this subpart may be provided in installments or in a lump sum.

(e) The relocation and, if necessary, rehabilitation of a dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

APPENDIX A—ADDITIONAL INFORMATION

This appendix provides additional information to explain the intent of certain provisions of the rule.

SUBPART A—GENERAL

Section 259.2(c) Definition of comparable replacement dwelling.

The requirement in § 259.2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section 259.2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in these regulations prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under these regulations. (If a person accepts assistance under a government housing program, the rental assistance payment under § 259.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 259.2(f)(2) Persons not displaced.

Section 259.2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under these regulations, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under these regulations may file an appeal in accordance with § 259.10.

Section 259.2(k) Initiation of negotiations.

This section of the rule provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 259.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 259.9(c) Reports.

This regulation allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this rule, a basic report form (see Appendix B) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

SUBPART B—REAL PROPERTY ACQUISITION

Section 259.101(a) General.

The provisions of this Subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this Subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this Subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to these regulations (see § 259.2(f)(2)(vi)), the displacement of a tenant-occupant of the real property is subject to these regulations.

Section 259.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 259.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approval appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 259.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 259.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 259.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 259.102(m) Fair Rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 259.103(b) Standards of appraisal.

In paragraph (b)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 259.103(c) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 259.103(f) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, the rule provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 259.104. This includes appraisals of real property valued at $2,500, or less.

Section 259.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses on that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 259.106 Expenses incidental to transfer of title to the agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Section 259.108 Donations.

This section provides that the Agency must obtain an appraisal and offer the full amount of just compensation due unless the owner, after being fully informed of such policies, releases the Agency from these obligations.

SUBPART C—GENERAL RELOCATION REQUIREMENTS

Section 259.204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, this regulation requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this rule is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 259.205 Relocation assistance advisory services.

Section 259.205(b)(2)(iii) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 259.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements, there is no basis for changing that determination.

Section 259.207 General requirements—claims for relocation payments.

Section 259.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

SUBPART E—REPLACEMENT HOUSING PAYMENTS

The provision in § 259.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § 259.402(b)(1) to use the fair market rent for the displacement dwelling is intended to address the computation of payments for homeowner-occupants (who, of course, paid no rent before displacement) and those unusual situations in which a tenant is paying an unreasonably low rent and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where the use of the fair market rent would result in a hardship because of the displaced person's income or other special circumstances.

SUBPART F—MOBILE HOMES

Section 259.503(c) Replacement housing payment for 180-day mobile homeowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 259.401 and a replacement housing payment for a site computed under § 259.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 259.401 to assist in the purchase of a replacement site or, under § 259.402, to assist in renting a replacement site.

SUBPART G—LAST RESORT HOUSING

Section 259.601(a) Basic determination to provide last resort housing.

No additional guidelines for implementation are included in the regulation because additional requirements would tend to limit the flexibility considered necessary or appropriate to provide comparable replacement housing on a timely basis.

Section 259.601(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 259.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of displacement dwelling" at § 259.2(l). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 259.602 Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.

Whenever last resort housing assistance is provided to a 180-day homeowner-occupant who must pay a higher interest rate for a new mortgage, reimbursement of increased mortgage interest costs may be based on the "buy down" approach, rather than the more costly formula at § 259.401(d). Under the "buy down" approach, a lump sum payment is made to reduce the amount of the new mortgage to the amount which can be amortized with the same repayment schedule (payment amounts and due dates) as the mortgage on the displacement dwelling. However, the "buy down" approach shall not be used to reduce a payment to less than $15,000 if the payment computed under § 259.401 would equal $15,000.

APPENDIX B—STATISTICAL REPORT FORM

This appendix sets forth the statistical information which may be collected from Agencies in accordance with § 259.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1-September 30, for the year in which the report is required.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal*

Agency) as soon as possible after September 30, but *NOT LATER THAN NOVEMBER 15* of the year in which the report is due.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in parentheses in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons Displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Columns (a) or (b). Report in Column (a) the number of claims approved during the report year. Report in Column (b) the total amount represented by the claims reported in Column (a).

Line 10b, Column (b). Report in Column (b) the amount of increased mortgage interest costs that was included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

Line 13. Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (b) the total financial assistance under section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $5,000 to rent a replacement dwelling, the sum of $4,000 shall be included on Line 11, Column (b), and $1,000 shall be included on Line 13, Column (b).)

Line 14. Report on Line 14 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Part C. Real Property Acquisition Subject to Uniform Act

Line 16, Columns (a) and (b). Report in Column (a) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column b), blank.

Part D. Relocation Appeals Filed During Report Year

Line 18. Report on Line 18 the total number of relocation appeals filed during the report year by a person alleging the Agency failed to properly determine the person's eligibility for, or the amount of, a relocation payment required under these regulations.

Model Uniform Act Report

Attachment
Appendix B

Part A Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	*Total* (a)	*No. of Owners* (b)	*No. of Tenants* (c)
1	Households *(Families and individuals)*			
2	Businesses and Nonprofit Organizations			
3	Farms			

Part B Relocation Payments and Expenses Under Uniform Act During Report Year

	Item		*No. of Claims* (a)	*Amount* (b)
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))		
5		Fixed Payment Including Dislocation Allowance (Section 202(b))		
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))		
7		Payment in Lieu of Actual Expenses (Section 202(c))		
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))		
9		Payment in Lieu of Actual Expenses (Section 202(c))		
10a	Replacement Housing Payments for Homeowners *(Section 203(a))*			
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs			
11	Rental Assistance Payment *(Tenants and Certain Others) (Section 204(1))*			
12	Downpayment Assistance *(Tenants and Certain Others) (Section 204(2))*			
13	Housing Assistance as Last Resort *(Section 206(a))*			
14	Relocation Advisory Assistance and Services Cost *(Section 205)*			
15	Total *(Sum of Lines 4 through 14 Excluding Line 10b)*			

Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	*No. of Parcels* (a)	*Compensation* (b)
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation Included on Line 16 *(where price disagreement was involved)*		

Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project / Program	

PART 260—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL PROPERTY

Sec.

260.1 Reissuance and purpose.
260.2 Applicability.
260.3 Policy.
260.4 Responsibilities.
260.5 Arbitration.
260.6 Definitions.

AUTHORITY: 49 Stat. 1559, as amended by Act of Aug. 3, 1954, Pub. L. 83-565, 68 Stat. 663, as further amended by Pub. L. 93-516, 88 Stat. 1622, (20 U.S.C. 107).

SOURCE: 43 FR 25337, June 12, 1978, unless otherwise noted.

§ 260.1 Reissuance and purpose.

This part updates Part 260 to implement the provisions of the Randolph-Sheppard Vending Stand Act and 45 CFR Part 13, Part 1369, and establishes within the Department of Defense:

(a) Uniform policies for application of priority accorded the blind to operate vending facilities;

(b) Requirements for satisfactory vending facility sites in DoD Component-owned or occupied buildings; and,

(c) Vending machine income-sharing requirements on property under the jurisdiction of a DoD Component.

§ 260.2 Applicability.

The provisions of this part apply to the office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components") in the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands.

§ 260.3 Policy.

In implementation of the Randolph-Sheppard Act, priority on DoD-controlled property will be extended to the blind as set out below:

(a) The blind will be given a priority in establishment and operation of vending facilities.

(b) The blind will be given a priority in award of contracts to operate cafeterias.

(c) In conjunction with acquisition or substantial alteration or renovation of property, satisfactory sites will be provided for operation of blind vending facilities.

(d) Certain income from vending machines operated by a DoD Component either directly or by contract will be given to State licensing agencies.

(e) DoD components will take necessary action to ensure that, within their areas of responsibility, the requirements set forth below are implemented.

(f) The blind have a priority right to operate vending facilities on DoD-controlled property when the opportunity to operate them becomes available. The priority extended allows blind licensees to be gainfully employed. While primary responsibility for carrying out this intent falls upon the State licensing agency, it is nevertheless a responsibility of the on-site official to ensure that the operator is in fact a State licensed blind person and that sighted employees or assistants are utilized only to the extent reasonably necessary.

(1) This priority will not be accorded when the on-site official determines, after conferring with the Head of the DoD component, that the interest of the United States would be adversely affected if the priority were accorded.

(2) Any determination that according the priority would be adverse to interests of the United States must be fully justified in writing through the head of the DoD component concerned (who will consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)) (ASD(MRA&L)). The justification then shall be sent to the Secretary, Department of Health, Education, and Welfare (HEW), who has authority to determine whether the failure to accord the priority is justified by the circumstances. This determination by the Secretary, HEW must be published in the FEDERAL REGISTER and is binding upon the DoD component.

(3) Applications for permits by the State licensing agency to operate vending facilities (except cafeterias) on DoD controlled property must be submitted in writing to the head of the DoD component concerned, through the on-site official. When an application is not approved, the head of the DoD component will advise the

State licensing agency in writing and will indicate the reasons for the disapproval. When issued, permits will describe the location of the vending facility and will be subject to the following requirements:

(i) The permit will be issued in the name of the State licensing agency.

(ii) The permit will be issued for an indefinite period of time subject to suspension or termination upon failure to comply with agreed upon terms; and subject to termination by either party upon 60 days written notice to the other party, in cases of (A) inactivation of the installation or activity, (B) loss of use of a building or other facility housing the vending facility, (C) change in the DoD component's requirements for service, or (D) inability of the State licensing agency to continue to operate the vending facility.

(iii) The permit will provide that:

(A) No charge will be made by the DoD component to the State licensing agency for normal repair and maintenance of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(B) The State licensing agency will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold, except as provided in paragraph (f)(3)(iii)(E) of this section. Neither party will be responsible for loss or damage to the other's property, unless proximately caused by its acts or omissions. The State licensing agency will also be responsible for the acts or omissions of the blind vendor, his employees or agents.

(C) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services traditionally found in blind operated vending facilities operated under the Randolph-Sheppard Act as determined by the State licensing agency in consultation with the on-site official, to be suitable for a particular location (articles and services may be dispensed automatically or manually);

(D) Vending facilities will be operated in compliance with applicable health, sanitation and building codes, ordinances, and regulations;

(E) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the on-site official and the State licensing agency. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination of a permit to operate a vending facility on the basis of noncompliance by either party, the costs of removal from the building will be borne by the noncomplying party.

(iv) The permit will also contain appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

(v) In the event the blind licensee fails to provide satisfactory service or otherwise fails to comply with the requirements of the permit issued to the State licensing agency, the on-site official will, after coordinating with the Head of the DoD Component, notify the State licensing agency of this deficiency in writing and request corrective action within a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Suspension or termination action will be taken by the Head of the DoD Component concerned after consultation with the ASD (MRA&L).

(g) The blind have a priority right to operate cafeterias on DoD-controlled property, as set out in paragraph (g) (1) or (2) of this section, when the cafeteria operation involved is contracted.

(1) Procuring activity solicitations, when issued, will establish basic requirements and the criteria for judging proposals. One copy of each solicitation will be provided to the State licensing agency for the blind. The criteria upon which proposals will be

evaluated may include factors such as sanitation practices, personnel, staffing, menu pricing and portion sizes, variety, budget and accounting practices, fees, and other relevant considerations.

(i) If the State licensing agency submits a proposal and it is not within the competitive range established by the contracting officer, award may be made to another offeror following normal procurement procedures, but only after the on-site official confers with the Head of the DoD Component.

(ii) If the State licensing agency submits a proposal and it is within the competitive range established by the contracting officer, the contract will be awarded to the State licensing agency except as provided in paragraph (g)(1)(iii) of this section.

(iii) The contracting officer may award to other than the State licensing agency when the on-site official determines that award to the State licensing agency would adversely affect the interests of the United States and the Secretary, HEW, approves the determination (processing will be in accordance with paragraph (f)(2) of this section), or when the on-site official determines, after conferring with the Head of the DoD Component, and the Secretary, HEW, agrees, that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(2) Direct negotiations may be undertaken with State licensing agencies whenever the on-site official, with concurrence of the Head of the DoD Component, has determined that State licensing agency, through its blind licensee, can provide the cafeteria services required at a reasonable cost, with food of a high quality comparable to that available from other providers of cafeteria services. In the event direct negotiations fail to result in a contract with the State licensing agency, the procedures prescribed in paragraph (g)(1) of this section, will be followed.

(3) The operation of a cafeteria by a blind vendor will be governed by contractual agreement, not by a permit. Normal contract administration procedures will apply, except that termination actions will not be taken without prior coordination with the Head of the DoD Component concerned.

(4) All contracts for the operation of cafeterias on DoD-controlled property with other than State licensing agencies will, upon expiration, be processed under the above paragraphs unless the State licensing agency informs the on-site official that it is not prepared to exercise its priority at that time.

(h) Any DoD Component acquired (purchased, rented, leased, constructed), or substantially altered or renovated building is required to have one or more satisfactory sites (as defined in § 260.6) for a blind-operated vending facility, except as provided in paragraph (h)(1) of this section.

(1) A determination that a building contains a satisfactory site or sites is presumed made if the State licensing agency and the on-site official consult and agree that the site or sites provided are satisfactory.

(i) DoD Components will notify by certified or registered mail, return receipt requested, the appropriate State licensing agency of buildings to be acquired or substantially altered or renovated. This notification will be provided at least 60 days in advance of the intended aquisition date or the initiation of actual construction, alteration or renovation. As a practical matter, the State licensing agency should be contacted early in the planning or design stage of a project. (This notice requirement does not apply in cases as described in paragraph (h)(1)(i)(C) of this section.) This notification will:

(A) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building,

(B) Forward a copy of a single line drawing indicating the proposed location of such site or sites,

(C) Assure the State licensing agency that, subject to the approval of the DoD Component involved, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building, and

(D) Also indicate that an unexplained response indicating that the State licensing agency does not desire to establish and operate a vending facility or the absence of a response within 30 days will be construed by the DoD Component concerned as a determination by the State licensing agency that the number of persons using the property is or will be insufficient to support a vending facility.

(ii) The State licensing agency must respond within 30 days acknowledging receipt of the correspondence from the DoD Component and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of a location and its selection of type of vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's response, if any, will be provided to the Secretary, HEW.

(iii) If the State licensing agency responds indicating that it does not desire to establish and operate a vending facility and sets forth any specific basis other than the insufficiency of persons to support a vending facility, then a satisfactory site which meets anticipated needs of the DoD Component will be incorporated. Each such satisfactory site will meet or exceed the requirements defined in § 260.6.

(iv) If an unexplained response indicating that the State licensing agency does not desire to establish and operate a vending facility is received, or if no response is received within the 30 day period, the on-site official will, through the Head of the DoD Component, notify the Secretary, HEW, that the State licensing agency's response or failure to respond has been construed as a determination by the State licensing agency that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the State licensing agency will not be incorporated, unless directed by the Secretary, HEW. This notification will also be provided if the State licensing agency responds and affirmatively indicates that it has made such a determination.

(2) The Secretary, HEW, has determined that the requirement to provide a satisfactory site does not apply:

(i) When fewer than 100 Federal employees (as defined in § 260.6) will be located in the building during normal working hours; or

(ii) When the building contains less than 15,000 square feet to be used for Federal Government purposes in the case of a building in which services are to be provided to the general public.

(3) The provisions of paragraph (h)(2) of this section, do not preclude arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified. For example, if a building is to be constructed which would contain only 80 Federal employees, upon agreement of the on-site official and the State licensing agency, the DoD Component concerned may determine to provide a satisfactory site in which the blind have agreed to operate a vending facility.

(4) When a DoD Component is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantial direct competition with such restaurant or other food operation, the requirement to provide a satisfactory site does not apply.

(i) Effective January 2, 1975, vending machine income generated by DoD will be shared with State licensing agencies for the blind and/or blind vendors as set forth below. The on-site official is responsible for the collection of, and accounting for, such vending machine income (as defined in § 260.6) and for otherwise ensuring compliance with the requirements of this paragraph.

(1) The vending machine income-sharing requirements are as follows:

(i) One hundred percent (100%) of the vending machine income from vending machines in direct competition with blind-operated vending facilities will be provided the State licensing agency.

(ii) Fifty percent (50%) of the vending machine income from vending ma-

BEST COPY AVAILABLE

chines not in direct competition with blind-operated vending facilities will be provided the State licensing agency.

(iii) Thirty percent (30%) of the vending machine income from vending machines not in direct competition with blind-operated vending facilities and located where at least 50 percent of the total hours worked on the premises occurs during other than normal working hours (as defined in § 260.6) will be provided the State licensing agency.

(2) The determination of whether a vending machine is in direct competition with the blind-operated vending facility is the responsibility of the on-site official subject to the concurrence of the State licensing agency.

(3) These vending machine income-sharing requirements do not apply to:

(i) Income from vending machines operated by or for the military exchanges or ships' stores systems; or

(ii) Income from vending machines, not in direct competition with a blind-operated vending facility, at any individual location, installation, or facility (as defined in § 260.6) where the total of the vending machine income (as defined in § 260.6) from all such machines at such location, installation, or facility does not exceed $3,000 annually.

(4) The payment to State licensing agencies under these income-sharing requirements must be made quarterly on a calendar year basis. The first payment of income, however, will be made no later than April 30, 1978. This first payment will be for the period March 23, 1977, through the end of calendar year 1977. It will also include amounts collected and set aside during the period January 2, 1975, through March 22, 1977, for distribution to State licensing agencies. DoD Component activities which did not set aside vending machine income for distribution during the period January 2, 1975, through March 22, 1977, will consider taking steps to determine the amounts of such vending machine income which should have been withheld during that period and withhold such amounts from future income for distribution. All subsequent quarterly payments will be made within 60 days after expiration of the applicable calendar quarter.

§ 260.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (ASD (MRA&L)) will monitor the overall DoD program and consult with DoD Components on all determinations (1) that the granting of a priority to the blind would be adverse to the interests of the United States, and (2) to suspend or terminate a permit to operate a vending facility.

(b) The Head of the DoD Component concerned, in monitoring its program shall:

(1) Approve/disapprove State licensing agency applications for permits and the provision of satisfactory sites;

(2) Consult with the on-site official on determinations that granting a priority to the blind would be adverse to the interests of the United States and on termination of contracts to operate a cafeteria; and

(3) Where circumstances warrant, suspend or terminate a permit to operate a vending facility.

(c) The on-site official will be the point of contact with State licensing agencies and will:

(1) Consult with State licensing agencies on articles and services to be provided;

(2) Determine, when appropriate, that granting a priority to the blind would be adverse to the interests of the United States and justify this determination to the Secretary, Health, Education, and Welfare through the Head of the DoD Component;

(3) Notify State licensing agencies of acquisition or substantial alteration or renovation of property;

(4) Ensure that operators are in fact State licensed blind persons and that sighted employees and assistants are utilized only to the extent reasonably necessary; and

(5) Negotiate with State licensing agencies on other matters indicated in § 260.3.

§ 260.5 Arbitration.

Whenever any State licensing agency for the blind determines that any activity of the Department of De-

BEST COPY AVAILABLE

fense is failing to comply with the provisions of the Act and all informal attempts to resolve the issues have been unsuccessful, the State licensing agency may file a complaint with the Secretary, HEW, who will convene an ad hoc arbitration panel in accordance with the provisions of 45 CFR 1369.37.

§ 260.6 Definitions.

(a) *Blind licensee.* A blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(b) *Cafeteria.* A food dispensing facility which provides a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a serving line where the customer serves or selects for himself from displayed selections. A cafeteria may be fully automatic, self-service, or have limited waiter or waitress service. Table or booth seating facilities are always provided. DoD Component food dispensing facilities which conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not "cafeterias" if they engage primarily in full table-service operations.

(c) *Direct competition.* The presence and operation of a DoD Component vending machine or a vending facility on the same premises as a vending facility operated by a blind vender. Vending machines or vending facilities operated in areas serving employees, the majority of whom normally do not have access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor, will not be considered to be indirect competition with that vending facility.

(d) *Federal property.* Any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States.

(e) *Head of the DoD component.* Deputy Secretary of Defense, Secretaries of the Military Departments and the Directors of Defense Agencies or their designees. For the Pentagon Building only, the Deputy Assistant Secretary of Defense (Administration) is designated as the "Head of the DoD Component."

(f) *Individual location, installation, or facility.* A single building or a self-contained group of buildings. A self-contained group of buildings means two or more buildings which are in close proximity to each other, and between which a majority of the Federal employees working in such buildings regularly move from one building to another in the normal course of their official business during a normal working day.

(g) *Federal employees.* Civilian appropriated fund and nonappropriated fund employees of the United States.

(h) *License.* A written instrument issued by a State licensing agency to a blind person, authorizing that person to operate a vending facility on Federal or other property.

(i) *Normal working hours.* An 8-hour work period between the hours of 0800 and 1800 hours, Monday through Friday.

(j) *On-site official.* The individual in command of an installation or separate facility or location. For the Pentagon Building only, the chairman of the Department of Defense Concession Committee is designated as the on-site official.

(k) *Permit.* The official written approval to establish and operate a vending facility requested by and issued to a State licensing agency by a DoD Component.

(l) *Satisfactory site.* An area fully accessible to vending facility patrons and having sufficient electrical, plumbing, heating, and ventilation outlets for the location of a vending facility in accordance with applicable health and building requirements. Effective March 23, 1977, a "satisfactory site" will have a minimum of 250 square feet available for sale of items and for storage of articles necessary for the operation of a vending facility, unless the Head of the DoD Component and the State licensing agency agree that a smaller or larger facility is appropriate.

(m) *State.* The 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands.

(n) *State licensing agency.* The State agency designated by the Department of Health, Education, and Welfare, Commissioner of the Rehabilitation Services Administration to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(o) *Substantial alteration or renovation.* A permanent material change in the floor area of a building which would render it appropriate for the location and operation of a vending facility by a blind vendor.

(p) *Vending facility.* Automatic vending machines, cafeterias, snack bars, cart services, shelters, and counters, which sell such items as newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles and services to be dispensed automatically or manually and which are prepared on or off the premises in accordance with applicable health laws and further including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State. "Vending facility" does not include food dispensing facilities (e.g., food operations of open messes/military clubs) which engage primarily in full table-service operations.

(q) *Vending machine.* For the purpose of assigning vending machine income, means a coin or currency operated machine which dispenses articles or services, except that machines providing services of a recreational nature, commonly referred to as amusement machines (e.g., jukeboxes, pinball machines, electronic game machines, pool tables, shuffle boards, etc.) and telephones, are not considered to be vending machines.

(r) *Vending machine income.* DoD Component receipts from DoD Component vending machine operations on Federal property, after deducting all applicable costs incurred (costs of goods, service, maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income-sharing, and so forth) where the machines are operated by any DoD Component activity; or commissions received (less applicable DoD Component costs) by any DoD Component activity from a commercial vending firm which provides vending machines on Federal property for, or with the approval of, any DoD Component activity.

(s) *Vendor.* A blind licensee who is operating a vending facility on Federal or other property.

PART 261—ARMED SERVICES MILITARY CLUB AND PACKAGE STORES

Sec.
261.1 Purpose.
261.2 Applicability.
261.3 Policy.
261.4 Procedures.
261.5 Responsibilities.
261.6 Information requirements.

AUTHORITY: 50 U.S.C. Appendix, Section 473, section 6.

SOURCE: 47 FR 34533, Aug. 10, 1982, unless otherwise noted.

§ 261.1 Purpose.

This part incorporates DoD Directive 1330.15, "Alcoholic Beverage Control," May 4, 1964, (which is hereby cancelled), provides policy and assigns responsibilities for the operation of military clubs and package stores of the Army, Navy, Air Force, and the Marine Corps; and authorizes the development, publication, and maintenance of DoD 1015.3-R, "Armed Services and Military Club and Package Store Regulations."

§ 261.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense and the Military Departments, including DoD activities with clubs and package stores designated as a service (executive agent) responsibility, and Defense Agencies (hereinafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 261.3 Policy.

It is the policy of the Department of Defense that Armed Services military clubs and package stores be established as an essential part of the DoD Morale, Welfare and Recreation

(MWR) program. In addition, the Department of Defense shall establish controls and procedures governing the sale of alcoholic beverages in these clubs and package stores. Affirmative measures shall be taken to provide character guidance, emphasizing the harmful effects of the immoderate use of alcohol. Chaplains and local community and national organizations shall assist in this effort. Military clubs shall provide dining, essential feeding (where required), and social programs, services, and facilities to eligible patrons. Package stores shall provide the sale of alcoholic beverages purchased for off-premise consumption by authorized patrons, and also provide a resale source of alcoholic beverages for all other authorized activities under 50 U.S.C., Appendix, Section 473. The establishment, management, and control of club and package store nonappropriated fund instrumentalities (NAFIs) shall be in accordance with DoD Directive 1015.1, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities (NAFIs)," August 19, 1981.

§ 261.4 Procedures.

Procedures and guidance are prescribed in DoD 1015.3-R, "Armed Services Military Club and Package Store Regulations." Chapter 4, section C., of this guidance reads as follows:

> "C. *COOPERATION*. The Department of Defense shall cooperate with local, state, and federal officials to the degree that their duties relate to the provisions of this chapter. However, the purchase of all alcoholic beverages for resale at any camp, post, station, base, or other DoD installation within the United States shall be in such a manner and under such conditions as shall obtain for the government the most advantageous contract, price and other considered factors. These other factors shall not be construed as meaning any submission to state control, nor shall cooperation be construed or represented as an admission of any legal obligation to submit to state control, pay state or local taxes, or purchase alcoholic beverages within geographical boundaries or at prices or from suppliers prescribed by any state."

§ 261.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs*, and Logistics) (ASD(MRA&AL)) shall:

(1) Provide guidance and direction in carrying out the provisions of this Part; and shall establish, maintain, and disestablish clubs and package stores in accordance with DoD Directive 1015.1.

(2) Delegate executive agent responsibilities consistent with DoD Directive 1015.1.

(3) Develop, publish, and maintain DoD 1015.3-R, consistent with DoD 5025.1-M.

(b) The *Secretaries of the Military Departments* shall:

(1) Act as executive agents for the administration of clubs and package stores, consistent with DoD Directive 1015.1.

(2) Establish a Fund Council whose composition and membership are provided at Chapter 1 of DoD 1015.3-R.

(c) The *Director of Defense Agencies* shall coordinate with the Military Service concerned in the preparation of a memorandum of understanding detailing Defense Agency responsibilities for the operation of clubs and package stores under the direction, regulation, and administration of the Military Service concerned.

§ 261.6 Information requirements.

(a) This part establishes a reporting requirement that is prescribed in Chapter 4 of DoD 1015.3-R for a triennial review of each package store.

(b) Report Control Symbol DD-M(TRI)1593 has been assigned to this information requirement.

PART 262—POLICIES GOVERNING THE CONTRIBUTION OF FEDERAL FUNDS TO THE STATES UNDER CHAPTER 133, TITLE 10, UNITED STATES CODE—FACILITIES FOR RESERVE COMPONENTS

Sec.
262.1 Purpose.
262.2 Applicability and scope.
262.3 Policies and procedures.
262.4 Authority of DoD agencies.
262.5 Background information relating to 10 U.S.C. 133.

AUTHORITY: Sec. 301, 80 Stat. 379; 5 U.S.C. 301.

SOURCE: 36 FR 4872, Mar. 13, 1971, unless otherwise noted.

§ 262.1 Purpose.

(a) This part updates and expands the policies established to implement section 2233(a) (2), (3), and (4) of chapter 133, title 10, United States Code which contains authority to provide facilities for the training of all Reserve components of the Armed Forces and authorizes contributions of Federal funds to the several States of the United States, Puerto Rico, and the District of Columbia (hereinafter referred to collectively as the States), as the Secretary of Defense shall determine to be necessary:

(1) To expand, rehabilitate, or convert facilities owned by such State to the extent required for the joint utilization of such facilities;

(2) To expand, rehabilitate, or convert facilities owned by such State to the extent made necessary, or to acquire, construct, expand, rehabilitate, or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation, or reorganization of a unit or units of the Army National Guard of the United States or the Air National Guard of the United States, requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively;

(3) To acquire, construct, expand, rehabilitate, or convert by such State such additional facilities that have been made essential by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States.

(b) It establishes criteria under which Federal funds may be contributed to the States to provide training facilities for the above Reserve components.

§ 262.2 Applicability and scope.

The provisions of this part apply to the Military Departments and encompass the Army National Guard of the United States and the Air National Guard of the United States, respectively (hereinafter referred to as "Reserve components").

§ 262.3 Policies and procedures.

In carrying out the provisions of this part, the Secretaries of the Military Departments will comply with the following:

(a) Each project toward which a contribution is granted by the Federal Government under the authority contained in Chapter 133, 10 U.S.C. shall be covered by an agreement between the United States and the State. The purpose of such agreement is to delineate the equities and obligations involved and assure not only a clear understanding of these obligations but definitely to establish these equities.

(b) The following policies are to be used as a guide in negotiating and executing agreements with States in the implementation of clauses (2), (3), and (4) of section 2233(a) of Chapter 133, 10 U.S.C.:

(1) All work authorized pursuant to clauses (2), (3), and (4) of section 2233(a) of Chapter 133, 10 U.S.C. shall be done in accordance with the laws of the State in which the project is located, and under the supervision of officials of such State, subject to inspection and approval by the Secretary of Defense or his delegate.

(i) Provisions definitive of such inspection and approval shall be included in said agreement, to accomplish the purpose of assuring that the work performed toward which the Federal contribution is made complies with the plans, specifications, criteria, and standards approved for the project by the Secretary of Defense or his delegate.

(ii) Except for supervision of a project, which function is reserved by law to State officials, the services of the Chief of Engineers or the Chief of the Naval Facilities Engineering Command may be utilized to the extent mutually agreed by the State and the Military Department concerned.

(2) A separate agreement shall be entered into between the State and the Federal Government for each project covering the terms, conditions, equities, and obligations of the parties.

(3) The State, as defined in section 2232(1) of Chapter 133, 10 U.S.C. shall certify that it has the legal authority and the necessary funds to accomplish its share of the project, that it will furnish evidence satisfactory to the Department of Defense of a perfected title to, or other adequate property in-

terest in, acceptable and suitable real estate, and that such real estate is located in an area appropriate, under local laws and ordinances relating to location and construction, to the use for which the facilities are intended.

(4) Plans, specifications and cost estimates shall be approved by the Federal Government.

(5) Unless terminated under the provisions of paragraph (b)(18) of this section, the agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.

(6) When a facility is to be jointly used by two (2) or more Reserve Components, the agreement shall:

(i) Identify the space, both within and outside the building or buildings, which is to be maintained and reserved for the exclusive use of those Reserve components that are designed by the Federal Government;

(ii) Identify the space, both within and outside the building or buildings, which is to be used in common by all Reserve components assigned to the facility;

(iii) Prescribe the extent of collaboration between the State and the Federal Government in the selection of the site location and the orientation of the facilities to be jointly and exclusively utilized by those Reserve components which are designated by the Federal Government;

(iv) Prescribe the costs to be borne by the Federal Government and by the State in maintaining the common use space, both within and outside the building or buildings, and in general administrative expense for janitorial and similar service. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of Chapter 133, 10 U.S.C.

(v) Prescribe generally for the time and extent of the use by the various components, and prescribe the method of resolving conflicts in schedules for use of the facilities.

(7) Insofar as it is determined at the time the Federal contribution is made that it is impracticable for the State and the Federal Government to delineate the extent of the spaces to be jointly and exclusively utilized by those Reserve components designated by the Federal Government, the agreement shall contain a covenant on the part of the State substantially as follows:

> To make such facility available for joint utilization to the extent that the State shall hereafter deem it to be practicable.

(8) In the event it is necessary to apply the concept of a "master agreement" contemplating future individual agreements with respect to specific projects, such "master agreement" shall contain an affirmative covenant on the part of the State in substantially the following form:

> At the time each contribution is made by the Government, to negotiate concerning the extent to which the facility covered thereby will be made available for joint use by units of two or more of the Reserve components of the Armed Forces.

(9) At no time during the term of the agreement shall such State permit any disposition or use to be made of such facility which will interfere with its use for the administration and training of units of the Reserve components of the Armed Forces of the United States, or in time of war or national emergency of other units of the Armed Forces of the United States or any other use by the Federal Government.

(10) The State shall take necessary action to the extent of its power or authority, to prohibit use of the facility by outside interests (such as adjacent land owners, public utility corporations, etc.) that would interfere with its use for its intended purpose.

(11) The State shall be required to maintain and preserve the facility in a state of good repair except that the Federal Government may contribute to the cost of maintenance to an extent commensurate with the joint use of the facility by those Reserve components which are designated by the Federal Government. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of Chapter 133, 10 U.S.C.

(12) Where the State accomplishes the project by contract, the State shall let such contract in accordance with the laws of such State, and under those regulations within the Armed Services Procurement Regulation which are applicable to federally assisted programs insofar as the application of such regulations by supervisory officials of the State is not precluded by nor inconsistent with the State laws. All contracts, subcontracts, and change orders shall be subject to prior approval by the Federal Government.

(13) The Federal Government shall determine what costs incurred or to be incurred by the State are allowable under the terms and conditions of the agreement. When so requested by the State, such determination shall be made prior to the execution of any contract by the State, and the State shall be advised thereof in writing, subject to conformance with applicable Department of Defense military construction policies and criteria.

(14) The State shall be required to maintain an accounting system which is acceptable to the Federal Government with respect to the construction work, as well as to the subsequent maintenance and operation of those facilities toward which the Federal Government contributes or will contribute funds for such maintenance and operation, including those facilities to be jointly used by other Reserve components.

(15) The contributions of funds by the Federal Government to the State shall be in accordance with a system whereby the Federal Government maintains adequate control of the expenditure of such funds until payment is due the contractor for work already completed. Payment, however, may be made periodically as work progresses, and the Federal share of the funds will be obligated upon the approval of the construction contract by the Federal Government, and will be made available in accordance with established fiscal procedures.

(16) The appropriate legal authority of the State shall certify that in his opinion the agreement is legal and binding and that its execution is duly authorized, and upon request of the Federal Government, the State shall furnish evidence of its authority to enter into the agreement.

(17) The agreement shall contain other clauses, which in the opinion of the cognizant Military Department and State, are required to more specifically delineate the equities and obligations of both the State and Federal Government and which are not in conflict with the policies enumerated herein.

(18) The agreement shall contain a clause and existing agreements may be amended to include a clause providing for termination of the agreement, subject to the approval of the Secretary of Defense or his designee, prior to expiration of the fixed term: *Provided*, That:

(i) The facility is replaced in kind without any further contribution by the Federal Government and the State executes an agreement on the replacement facility for the unexpired term of the agreement to be terminated, or

(ii) The State agrees to reimburse the Federal Government for its equity in the asset which shall be computed as that proportion of the Federal contribution or grant as the unexpired term of the agreement bears to the full term of the agreement.

§ 262.4 Authority of DoD agencies.

The provisions of DoD Directive 5100.10, subject: "Delegation of Authority With Respect to Reserve Forces Facilities," dated August 20, 1962 (published at 27 FR 8630, Aug. 29, 1962), which delegates certain authorities with respect to Reserve Forces Facilities vested in the Secretary of Defense by the Act, as amended (Chapter 133 Title 10, United States Code), to certain officials in the Department of Defense, apply specifically in the implementation of this Directive.

§ 262.5 Background information relating to 10 U.S.C. 133.

(a) It is recognized that many existing State-owned or State-controlled facilities contain certain types of space, such as drill halls, which were not being fully utilized because of limited support (administrative) space, locker rooms, etc. Contributions of Federal funds to the State for the expansion of these facilities to provide this additional space will insure maximum fiscal economy through the full and joint utilization of common space to the maximum extent practicable.

(b) It is also recognized that many existing State-owned or State-controlled facilities cannot physically accommodate certain equipment involved upon conversion, redesignation, or reorganization of the organizational units previously assigned to those facilities. A provision of chapter 133, 10 U.S.C. (see § 262.1(b)) will relieve the States of the inequitable burden of financing the cost of physical changes in existing facilities made necessary by such organizational changes requested or authorized by the Federal Government.

PART 263—TRAFFIC AND VEHICLE CONTROL ON CERTAIN DEFENSE MAPPING AGENCY SITES

Sec.

263.1 Definitions.
263.2 Applicability.
263.3 Compliance.
263.4 Registration of vehicles.
263.5 Inspection of license and registration.
263.6 Speeding or reckless driving.
263.7 Emergency vehicle.
263.8 Signs.
263.9 Right-of-way in crosswalks.
263.10 Parking.
263.11 Penalties.

AUTHORITY: 63 Stat. 377 as amended, 18 U.S.C. 13, 40 U.S.C. 318 a through d, 50 U.S.C. 797, Delegations, 43 FR 56895, 46 FR 58306.

SOURCE: 48 FR 34952, Aug. 2, 1983, unless otherwise noted.

§ 263.1 Definitions.

As used in this part:

(a) "Brookmont site" means those grounds and facilities of the Defense Mapping Agency Hydrographic/Topographic Center (DMAHTC) and the Defense Mapping Agency Office of Distribution Services (DMAODS) located in Montgomery County, Maryland, over which the Federal Government has acquired exclusive or concurrent jurisdiction.

(b) "Uniformed guard" means a designated DMA government guard appointed to enforce vehicle and traffic regulations by the Director, DMAHTC.

§ 263.2 Applicability.

The provisions of this regulation apply to all areas in the Brookmont site and to all persons on or within the site. They supplement those penal provisions of Title 18, U.S. Code, relating to crimes and criminal procedures, which apply without regard to the place of the offense and those provisions of state law which are made federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13.

§ 263.3 Compliance.

(a) All persons entering the site shall comply with this regulation; with all official signs; and with the lawful directions or orders of a uniformed guard in connection with the control or regulation of traffic, parking or other conduct at the Brookmont site.

(b) At the request of a uniformed guard, a person must provide identification by exhibiting satisfactory credentials (such as driver's license).

(c) No person shall knowingly give any false or fictitious report concerning an accident or violation of this regulation to any person properly investigating an accident or alleged violation.

(d) All incidents resulting in injury to persons or damage to property must be reported to the Security Office immediately.

(e) No person involved in an accident shall leave the scene of that accident without first giving aid or assistance to the injured and making his or her identity known.

§ 263.4 Registration of vehicles.

(a) Newly assigned or employed individuals who intend to operate a privately-owned vehicle at the site shall register it with the Security Police Division within 24 hours after entry on duty.

(b) Temporary registration for a specified period of time will be permitted for temporarily hired, detailed, or assigned personnel; consultants; contractors; visiting dignitaries, etc.

§ 263.5 Inspection of license and registration.

No person may operate any motor vehicle on the site without a valid, current operator's license, nor may any person, if operating a motor vehicle on the site, refuse to exhibit for inspection, upon request of a uniformed guard, his operator's license or proof of registration of the vehicle under his control at time of operation.

§ 263.6 Speeding or reckless driving.

(a) No person shall drive a motor vehicle on the site at a speed greater than or in a manner other that what is reasonable and prudent for the particular location, given the conditions of traffic, weather, and road surface and having regard to the actual and potential hazards existing.

(b) Except when a special hazard exists that requires lower speed, the speed limit on the site is 15 m.p.h., unless another speed limit has been duly posted, and no person shall drive a motor vehicle on the site in excess of the speed limit.

§ 263.7 Emergency vehicles.

No person shall fail or refuse to yield the right-of-way to an emergency vehicle when operating with siren or flashing lights.

§ 263.8 Signs.

Every driver shall comply with all posted traffic signs.

§ 263.9 Right-of-way in crosswalks.

No person shall fail or refuse to yield the right-of-way to a pedestrian or bicyclist crossing a street in the marked crosswalk.

§ 263.10 Parking.

(a) No person, unless otherwise authorized by a posted traffic sign or directed by a uniformed guard, shall stand or park a motor vehicle:

(1) On a sidewalk, lawn, plants or shrubs.

(2) Within an intersection or within a crosswalk.

(3) Within 15 feet of a fire hydrant, 5 feet of a driveway or 30 feet of a stop sign or traffic control device.

(4) At any place which would result in the vehicle being double parked.

(5) At curbs painted yellow.

(6) In a direction facing on-coming traffic.

(7) In a manner which would obstruct traffic.

(8) In a parking space marked as not intended for his or her use.

(9) Where directed not to do so by a uniformed guard.

(10) Except in an area specifically designated for parking or standing.

(11) Except within a single space marked for such purposes, when parking or standing in an area with marked spaces.

(12) At any place in violation of any posted sign.

(13) In excess of 24 hours, unless permission has been granted by the Security Office.

(b) No person shall park bicycles, motorbikes or similar vehicles in areas not designated for that purpose.

(c) Visitors shall park in areas identified for that purpose by posted signs and shall register their vehicles at the front desk of Erskine Hall, Ruth Building or Fremont Building.

(d) No person, except visitors, shall park a motor vehicle on the Brookmont site without having a valid parking permit displayed on such motor vehicle in compliance with the instructions of the issuing authority.

§ 263.11 Penalties.

(a) Except with respect to the laws of the State of Maryland assimilated under 18 U.S.C. 13, whoever shall be found guilty of violating these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both in accordance with 40 U.S.C. 318c. Except as expressly provided in this part, nothing contained in these regulations shall be construed to abrogate any other Federal laws or regulations, or any State and local laws and regulations applicable to the area in which the site is situated.

(b) In addition to the penalties described in subsection (a) of this section, parking privileges may be revoked by the issuing authority for violations of any of the provisions of this regulation.

(c) Any motor vehicle that is parked in violation of this regulation may be towed away or otherwise moved if a determination is made by a uniformed guard that it is a nuisance or hazard. A fee for the moving service and for the storage of the vehicle, if any, may be charged, and the vehicle is subject to a lien for that charge.

PART 264—INTERNATIONAL INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION

Sec.
264.1 Purpose and cancellation.
264.2 Scope.
264.3 Background.
264.4 Policy.
264.5 Claims for compensation.

AUTHORITY: Secs. 601, 606, 75 Stat. 438, 440; 22 U.S.C. 2351, 2356.

SOURCE: 25 FR 14456, Dec. 31, 1960, unless otherwise noted.

§ 264.1 Purpose and cancellation.

The purpose of this part is to restate Department of Defense policy concerning the international interchange for defense purposes of patent rights and technical information. DoD Directive 2000.3, "Technical Property Interchange Agreements", dated April 15, 1954, is hereby superseded and cancelled. Delegation published at 19 FR 2523 is cancelled.

§ 264.2 Scope.

This part applies to the activities of all Department of Defense personnel involved in the international interchange for defense purposes of patent rights and technical information. The policy prescribed herein applies to unclassified as well as classified information, owned by the United States Government or privately owned, but does not apply to patents, patent applications, and technical information in the field of atomic energy.

§ 264.3 Background.

(a) Pursuant to the provisions of the Mutual Security Act of 1954, as amended, and of predecessor legislation superseded by that Act, the United States has entered into agreements for the Interchange of Patent Rights and Technical Information for Defense Purposes with Australia, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom. The agreements, which are published in the Treaties and Other International Act Series, are basically similar in substance but are not identical. Under the agreements:

(1) Each government undertakes to facilitate the interchange of privately owned patent rights and of technical information through the medium of commercial relationships, to the extent permitted by the laws and security requirements of the contracting governments.

(2) When technical information is supplied by one government to the other for information only, the recipient government undertakes to treat the information as disclosed in confidence and to use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner to obtain patent or similar statutory protection.

(3) When technical information supplied by one government to the other discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, the recipient government undertakes to accord similar treatment to a corresponding patent application filed in that country.

(4) When privately owned technical information is released by one government to the other and the recipient government uses or disclosed the information, the owner shall, subject to the extent that the owner may be entitled thereto under the applicable law and subject to arrangements between the contracting governments regarding the assumption as between them of liability for compensation, receive prompt, just and effective compensation for such use and for any damages resulting from such use or disclosure.

(5) Each government is entitled to use for defense purposes without cost any invention which the other government (including government corporations) owns or to which it has the

BEST COPY AVAILABLE

right to grant a license to use, except to the extent that there may be liability to any private owner of an interest in the invention.

(b) Each of these agreements establishes a Technical Property Committee consisting of a representative of each contracting government, whose function it is to consider and make recommendations to the contracting governments on all matters relating to the subject of the agreement and to assist where appropriate in the negotiation of commercial or other agreements for the use of patent rights and technical information in the military assistance program.

(1) The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (USRO), Paris, France, is the United States representative to the Technical Property Committees in Europe. The J-4, Hq. United States Forces Japan, Tokyo, Japan is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office of Assistant General Counsel, International Affairs, Office of the Secretary of Defense, is the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

(2) These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs is responsible within the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative in Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative in Japan shall be transmitted to the Commanding General, United States Forces Japan.

(c) Department of Defense problems arising in the United States in connection with the interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate Military Department.

[25 FR 14456, Dec. 31, 1960, as amended at 26 FR 1993, Mar. 8, 1961; 26 FR 6479, July 19, 1961]

§ 264.4 Policy.

It is the policy of the Department of Defense to encourage and facilitate international interchanges of patent rights and technical information to further the common defense of the United States and friendly nations. In achieving this purpose, the following principles shall be observed.

(a) Classified military information shall be released only through Government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that policy.

(b) In accordance with the Congressional policy prescribed by section 413(a) of the Mutual Security Act of 1954, as amended (22 U.S.C. 1933(a)), and pursuant to the bilateral agreements referred to in § 264.3, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

(c) In accordance with section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war in the United States Munitions List shall be subject to the regulations issued by the Secretary of State pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) (Title 22, Code of Federal Regulations, Chapter I, Subchapter M). (The term "technical data" is used in those regulations to describe technical information relating to such articles).

(d) Technical information which might be privately owned may be released under paragraph (e) (1) or (2) of this section by Department of Defense Agencies to foreign governments if any one of the following conditions are met:

(1) The owner expressly consents to the proposed release;

(2) The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances which permit the proposed release; or

(3) The Secretary of the Military Department concerned, or his designee, determines, under the authority of the Mutual Security Act of 1954, as amended, that:

(i) The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

(ii) The owner refuses consent and the best interests of the United States would be served by the release.

(e) In accordance with the provisions of the agreements referred to in § 264.3, the release to foreign governments by Department of Defense agencies of technical information which might be privately owned shall normally be in accord with the following two step procedure:

(1) Release for information only.

(2) Permission for manufacture, or use, for defense purposes.

(f)(1) All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

1. This information is accepted for defense purposes only.

2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.

3. This information shall not be disclosed to another country without the consent of the United States.

(2) When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

4. This information is accepted upon the understanding that it might be privately owned.

5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

6. The recipient Government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

(g) When technical information which might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

(1) Notice of the release;

(2) The identity of the recipient, if not contrary to security regulations;

(3) Notice that the recipient has been advised that the information might be privately owned; and

(4) Notice of the restrictions to which the release is subject.

§ 264.5 Claims for compensation.

(a) With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) provides the exclusive remedy for compensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

(b) The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective departments.

(c) Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

PART 268—COLLECTING AND REPORTING OF FOREIGN INDEBTEDNESS WITHIN THE DEPARTMENT OF DEFENSE

Sec.

268.1 Purpose.
268.2 Applicability.
268.3 Policy.
268.4 Responsibilities.
268.5 Collection and followup procedures.
268.6 Reporting of accounts receivable and sales under 120 days delayed payment terms (short-term credit).
268.7 Collecting and reporting of foreign debts under long-term loans and debts.
268.8 Flash report of major foreign debt arrearages.
268.9 Discussion of terms.

AUTHORITY: Federal Claims Collection Act of 1966 (31 U.S.C. 951-953); Arms Export Control Act, sec. 23.

SOURCE: 43 FR 11196, Mar. 17, 1978, unless otherwise noted.

§ 268.1 Purpose.

This part establishes standard procedures to be used for the collecting and reporting of foreign indebtedness. Such indebtedness may arise through the (a) sale of Defense articles and services pursuant to the Arms Export Control Act; (b) operation of military missions; and (c) logistical support provided under country-to-country agreements.

§ 268.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 268.3 Policy.

It is the policy of the Department of Defense that timely and aggressive collection efforts will be conducted to assure that foreign arrearages to DoD Components are held to the absolute minimum. Foreign indebtedness will be uniformly and accurately reported to the Department of the Treasury on forms prescribed by the Treasury Fiscal Requirements Manual. The information system on the status of collection actions will support the information requirements of the National Advisory Council on International Monetary and Financial Policies (NAC).

§ 268.4 Responsibilities.

(a) The assistant Secretary of Defense (Comptroller) is the DoD point of contact for matters concerning foreign indebtedness requirements imposed on DoD from outside the Department, such as by the Congress, Treasury Department, and NAC.

(b) The Defense Security Assistance Agency (DSAA) is responsible for consolidation of feeder arrearage reports and submission of a single consolidated DoD arrearage report to the Treasury Department. The DSAA shall (1) monitor collection actions; (2) follow up when initial collection actions have been unsuccessful; and (3) serve as the focal point within DoD for responding to NAC information requests.

(c) Unless otherwise directed, the DoD Component which makes the sale, or is otherwise assigned responsibility, is responsible for taking initial collection action, accounting for indebtedness, preparation of feeder arrearage reports, and providing copies of arrearage reports to the DSAA.

§ 268.5 Collection and followup procedures.

Each DoD Component is responsible for taking timely and aggressive billing and followup collection actions for each category of indebtedness incurred by official and private obligors pursuant to authorized programs.

§ 268.6 Reporting of accounts receivable and sales under 120 days delayed payment terms (short-term credit).

(a) *General.* (1) Amounts payable to DoD Components for sales of Defense articles and services on terms which require payment of cash in advance of delivery/performance or within 60 days thereof will be classified as accounts receivable. Military Departments shall submit reports to the DSAA of foreign indebtedness related to those sales.

(2) Sales made by DoD Components under existing cases which provide for 120-day payment terms shall be classified as short-term credit sales. Similarly, those sales made after September 30, 1976, under special emergency appropriations which provide for payments 120 days after delivery of articles or services will also be classified as short-term credit sales. DoD Components shall submit reports to the DSAA of these short-term credit sales.

(3) Foreign indebtedness to DoD Components for logistical support, mission support costs, and other programs is payable upon presentation of the appropriate billing documents. Reports of foreign indebtedness related to these programs will be submitted to the DSAA.

(b) *Basis for reporting.* Amounts to be reported will be determined by analyzing unpaid bills using the criteria and definitions contained in § 268.9.

§ 268.7 Collecting and reporting of foreign debts under long-term loans and debts.

The DSAA is responsible for administering FMS long-term loans and credit programs authorized by Section 23 of the Arms Export Control Act, and likewise is responsible for determining foreign indebtedness against these programs. Debts remaining uncollected 90 days after the due date will be referred to the State Department for diplomatic assistance to effect settlement.

§ 268.8 Flash report of major foreign debt arrearages.

Major foreign debt arrearages are monitored by the NAC. Therefore, periodically DSAA will request flash reports from the DoD Components to satisfy NAC requirements for information on major foreign debt arrearages. For this purpose, a "major" foreign debt arrearage is any country program arrearage which involves the sum of $250,000 or more. Flash reports will be submitted directly to DSAA by the local command in message form with information copies to the next higher command. The report will reflect any significant changes in major foreign debt arrearages from the quarterly foreign indebtedness reports submitted in accordance with § 268.6. Collections, information on increased indebtedness, problems encountered in unsuccessful collection attempts, or country circumstances which may adversely affect collections are examples of the information which should be included in the flash reports.

§ 268.9 Discussion of terms.

(a) *Accounts receivable.* "Accounts receivable" consist of those amounts due in which the original payment time required full payment within 90 days of delivery or performance. It excludes principal payments or interest on short-term and long-term loans and credits.

(b) *Arrearage delinquency determination.* Obligations generated by formal agreements, as in the case of Foreign Military Sales contracts, are due on the dates specified in the contract or on the date specified in billings rendered in accordance with these contracts. Obligations incurred under Military Mission Support (Program 142) Logistical Support (Program 143) and any other authorized programs are due on the date billings are made to the customer country unless otherwise stated in the bill. Followup and reporting actions required by this part will be taken based on these dates. (See § 268.5.)

(c) *Country designations.* For reporting purposes, grants and contingent liabilities will be identified with the country which receives the benefit. Loans and credits will be identified generally with the country of the obligor or, in the instance of official multinational organizations, with the institution name. When the project is located in, or goods are destined for another country or area, the latter country or area should be stated in the description of purpose. If a government credit intermediary is the obligor, the transaction should be identified with the country where the project is located or the goods are destined.

(1) *United States.* "United States" shall mean the states of the United

States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Canal Zone, Guam, Midway Island, U.S. Virgin Islands, and Wake Island.

(2) *Foreign country designations.* Country designations other than the "United States" shall be consistent with the standardized names and codes contained in the Military Assistance and Sales Manual (MASM).

(3) *Official Multinational Organization.* For reporting purposes, "Official Multinational Organization" shall mean any international or regional organization (or affiliated agency thereof) created by treaty or convention between sovereign states.

(d) *Dollar equivalents of foreign currency.* Represents dollar equivalent of all foreign currency amounts disbursed and still outstanding, undisbursed balances, and arrearages of principal and interest. They shall be computed at the reporting rate prescribed by Treasury Department Circular No. 930 for balances as of the end of the reporting period. The dollar equivalents of all other reportable amounts shall be the summation of individual transactions computed at the reporting rate prescribed for the period in which the transactions occurred.

(e) *Foreign indebtedness.* "Foreign indebtedness" means financial obligations owed to the U.S. Government by the following entities in connection with DoD activities.

(1) Any individual, including a citizen of the United States (excluding U.S. military members and U.S. Government employees) domiciled outside the United States.

(2) Any partnership, association, corporation, or other organization created or organized under the laws of a foreign country, excepting branches or agencies thereof located in the United States.

(3) Any branch, subsidiary, or allied organization within a foreign country of a partnership, association, corporation, or other organization created or organized under the laws of a foreign country or the United States.

(4) Any government of a foreign country and any subdivision, agency, or instrumentality thereof, including all foreign "Official" institutions, even though located in the United States.

(5) Any private relief, philanthropic, or other organization of a multinational or regional character with headquarters abroad.

(6) Any official multinational organization, defined as any international or regional organization (or affiliated agency thereof) created by treaty or convention between sovereign states.

(f) *Indebtedness.* "Indebtedness" within the context of this part refers to financial obligations to make payment(s) to the U.S. Government in accordance with contractual or other arrangements. Such obligations generally arise from (1) the disbursements of cash to be repaid at a future time (with or without interest), (2) the extension of credit (by formal agreement or an open book account) in connection with the sale of products, property, or services, (3) the formal deferral of interest collection, (4) the purchase or repurchase of obligations that have been insured or guaranteed by the U.S. Government, and (5) payments by the U.S. Government in cases of default on insured or guaranteed loans and other investments when the U.S. Government acquires a debt instrument from the insured.

(g) *Long-term loans and credits.* "Long-term loans and credits" include any indebtedness under which the original payment terms provided for payment within a period of time exceeding one year after delivery or performance.

(h) *Official obligor.* "Official obligors" are debtors or guarantors who are:

(1) Central governments or their departments (ministries) or components, whether administrative or commercial.

(2) Political subdivisions such as states, provinces, departments, and municipalities.

(3) Foreign central banks.

(4) Other institutions (such as corporations, development banks, railways, and utilities) when (i) the budget of the institution is subject to the approval of the government, or (ii) the government owns more than 50 percent of the voting stock or more than half of the members of the board of directors are government representa-

tives, or (iii) in the case of default the government or central bank would become liable for the debt of the institution.

(5) Any official multinational organization.

(i) *Private obligor.* "Private obligors" are all debtors or guarantors who are not defined as "official obligors."

(j) *Program.* "Program" is the law, international treaty, appropriation, or other authority under which the loans or credits are extended, or the accounts receivable arise. When a narrative program designation is required, commonly used terms should be used, e.g., Arms Export Control Act, Logistical Support, and Military Assistance Advisory Groups.

(k) *Short-term loans and credits.* "Short-term loans and credits" include any indebtedness under which the original payment terms provided for payment within a period from 90 days to and including one year after delivery or performance.

(l) *Time conventions.* The terms 30, 60 and 90 days should be interpreted to mean 1, 2, and 3 calendar months, respectively. That is, the period February 6 through May 5 would be considered to be 90 days. For example, in calculating amounts "due and unpaid" 90 days or more as of December 31 the amounts due before October 1 and remaining unpaid as of December 31 would be reportable. However, amounts due as of October 1 but remaining unpaid at December 31 would not be reportable.

PART 272—ADMINISTRATION AND SUPPORT OF BASIC RESEARCH BY THE DoD

Sec.
272.1 Purpose.
272.2 Definition of basic research.
272.3 Background.
272.4 Principles.
272.5 Policy.
272.6 Implementation.

AUTHORITY: Secs. 2202, 2301-2314, 70A Stat. 127-133; secs. 1-3, 72 Stat. 1793; 5 U.S.C. 301; 10 U.S.C. 2202, 2301-2314, 42 U.S.C. 1891-1893; E.O. 10521 (19 FR 1499, as amended by sec. 6(b), E.O. 10807, 24 FR 1899.

SOURCE: 26 FR 11831, Dec. 9, 1961, unless otherwise noted.

§ 272.1 Purpose.

This part states the policy of the Department of Defense on the administration and support of basic research.

§ 272.2 Definition of basic research.

Basic research is that type of research which is directed toward increase of knowledge in science. It is research where the primary aim of the investigator is a fuller understanding of the subject under study.

§ 272.3 Background.

(a) E.O. 10521, as amended, "Administration of Scientific Research by Agencies of the Federal Government," (19 FR 1499) provides broad guidelines for administration of basic scientific research by Federal agencies. These guidelines state that while the National Science Foundation shall be increasingly responsible for providing Federal support for general purpose basic research, the conduct and support by other Federal agencies of basic research in areas which are closely related to their missions is recognized as important and desirable and shall continue.

(b) The Director of Defense Research and Engineering is responsible to the Secretary of Defense for the review and direction of the basic research program of the military departments and other agencies of the Department of Defense authorized to conduct or support basic research, and shall ensure that this program is executed according to the provisions of E.O. 10521. This review will be of maximum effectiveness if all elements of the Department adhere to the same fundamental principles in their conduct and support of basic research.

§ 272.4 Principles.

(a) Basic research is essential to the development of military power.

(b) Continuity is essential to successful basic research. Therefore, long-term planning and funding of basic research will be employed to the maximum possible extent.

(c) Basic research may be conducted by competent scientists in universities and non-profit institutions, industry, military laboratories, or elsewhere.

(d) Sustained support of basic research will result in increased effectiveness and economies in military programs.

(e) Free and effective communication among scientists is important to basic research.

§ 272.5 Policy.

(a) It is the policy of the Department of Defense:

(1) To conduct and support a broad and continuing basic research program to provide fundamental knowledge, with emphasis on that related to the needs of the Department of Defense; and

(2) To assure full utilization of our scientific resources and to extend those resources in those areas of science relevant to the mission of the Department of Defense; and

(3) To maintain, through such a program, effective communication among the scientists of the Department of Defense and the scientists of the universities and industry; and

(4) To coordinate this program of basic research with the National Science Foundation; and

(5) To encourage the support of basic research by other government and private agencies.

§ 272.6 Implementation.

(a) It is the responsibility of the Director of Defense Research and Engineering to produce, on a continuing basis, a sound basic research program through the coordination and integration of the elements of the program among the military departments and other agencies of the Department of Defense authorized to conduct or support basic research.

(b) The Department of Defense provides support of basic research by:

(1) *Support of in-house laboratories.* Basic research in laboratories of the Department of Defense or in laboratories of other government agencies, best qualified for such work in particular areas, should be encouraged.

(2) *Grants to and contracts with educational and nonprofit institutions.* In situations appropriate for grants under the provisions of Part 273 of this chapter the grant instrument is the preferred method of supporting basic research by educational and other non-profit institutions.

(3) *Contract with industry.* Contracts specifically for basic research may be made with industrial contractors (including small businesses) which have a recognized special competence in a given area. In the administration of the provisions of Part 15 of this chapter, which relate to the allowability of a contractor's independent research costs under certain Department of Defense contracts, favorable consideration should be given to independent basic research.

(c) The military departments and other agencies of the Department of Defense authorized to conduct or support basic research will provide the Director of Defense Research and Engineering with such information as he may require in order to carry out his responsibilities under this part, including annual reports through established administrative and fiscal channels of the following, by contract or grant and dollar value:

(1) Basic research performed in government laboratories.

(2) Basic research grants to educational and nonprofit institutions.

(3) Basic research contracts to educational and nonprofit institutions.

(4) Basic research contracts to industrial contractors, including small business.

(5) Independent basic research recognized as an allowable cost in an advance agreement under the provisions of Part 15 of this chapter. Such costs shall be reported via the Assistant Secretary of Defense (Installations and Logistics).

PART 273—RESEARCH GRANTS AND TITLE TO EQUIPMENT PURCHASED UNDER GRANTS

Sec.
273.1 Reissuance and purpose.
273.2 Applicability.
273.3 Definitions.
273.4 Policy.
273.5 Responsibilities and authorities.

AUTHORITY: Rev. Stat. 161, 5 U.S.C. 301, and Pub. L. 85-934.

SOURCE: 43 FR 21325, May 17, 1978, unless otherwise noted.

§ 273.1 Reissuance and purpose.

This part reissues Part 273 to:

(a) Incorporate the provisions of OMB Circular A-110.

(b) Outline criteria and requirements necessary to make grants for the support of scientific research and vest title to equipment purchased or acquired under grants.

(c) Delegate authority to carry out the responsibilities of the Secretary of Defense under Pub. L. 85-934.

(d) Implement the uniform administrative requirements contained in OMB Circular A-110.

§ 273.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DoD Components").

§ 273.3 Definitions.

(a) *Grant.* An award of funds or equipment pursuant to a written agreement executed by a sponsoring agency of the Department of Defense under the authority of Pub. L. 85-934. The definition of a grant as stated herein falls within the definition of "other agreements" as set forth in OMB Circular A-110.

(b) *Sponsoring agency.* A DoD Component or official research activity authorized under § 273.5 basic Directive, to make grants in support of research.

(c) *Research.* Scientific study and experimentation directed toward:

(1) Increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs.

(2) Providing fundamental knowledge required for the solution of military problems.

(3) Forming a part of the base for (i) subsequent exploratory and advanced developments in defense-related technologies; and (ii) new or improved military functional capabilities in such areas as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

(d) *Grantee organization* or *recipient.* Any corporation, foundation, trust, or institution (1) operated for purposes of higher education or whose primary purpose is the conduct of scientific research; (2) not organized for profit; and (3) no part of whose net earnings inure to the profit of any private shareholder or individual. Grantee organizations located outside the U.S. and Canada are referred to as "foreign grantee organizations."

§ 273.4 Policy.

(a) *General*—(1) *Use of grants.* A grant will be limited to the support of those research projects of excellence authorized by Pub. L. 85-934 which are performed by the type of recipients covered under OMB Circular A-110 and which meet relevant research requirements related to the mission of the DoD.

(2) *Prior to awarding a grant.* (i) The grantee organization (defined in § 273.3) must furnish a letter of assurance that it is complying with the provisions of 32 CFR Part 300.

(ii) Environmental factors involved in research programs or projects will be considered, pursuant to the guidelines of 32 CFR Part 214.

(iii) A determination must be made that the grantee organization is not in violation of the statutory limitations contained in section 606, Pub. L. 92-436[1] or any similar enactment of a later date.

(iv) If the proposed grant to a foreign grantee organization is more than $10,000, the Secretary of the Military Department concerned, or his designee, must determine in advance that the research cannot be performed by a U.S. or Canadian organization, and that it is not feasible to forego performance.

(3) *Special instructions*—(i) *Cost sharing.* Sponsoring agencies shall en-

---

[1] Section 606 requires that no funds be expended at any institution of higher learning whose policies bar military recruiting personnel from their premises, unless the Secretary of Defense, or his designee, specifically determines that a renewal or continuation of previous grants to such institutions is likely to contribute significantly to the Defense effort.

courage grantee organizations to contribute to the cost of performing research, unless the grantee organization has little or no non-Federal sources of funds from which to make a cost contribution. Guidelines applicable to cost contribution by grantee organizations are contained in FMC 73-3 and supplemented by OMB Circular A-110.

(ii) *Vesting of equipment.* Title to equipment purchased or acquired under a grant shall be vested in the grantee organization in accordance with OMB Circular A-110 and Pub. L. 94-519.

(b) *Grant agreements.* These shall be brief and contain only those provisions which accurately reflect the nature of the grant relationship and which are required by statute or are necessary for the protection of the fundamental interests of the Department of Defense. Provision shall be made for:

(1) The maintenance of records adequate to (i) document the actual amount of any participation and (ii) determine whether or not grant funds have been properly expended.

(2) Appropriate patent, property, and data rights.

(3) The suspension or revocation of grants.

(4) The receipt by the sponsoring agency of technical reports and the results of all research performed by the grantee organization.

(c) *Administration of grants.* (1) Grants shall be administered by the cognizant contract administration office using the ASPR provisions as a guide and in accordance with the provisions of OMB Circular A-110 except for grants to recipients excluded by paragraph 6.b. of the Circular. To the extent practical, the substance of the policies in the Circular will be applied to recipients not covered by it, except that where any statute expressly prescribes policies or specific requirements that differ from the standards in the Circular, the provisions of the statute will govern.

(2) Applicable cost principles of parts 2 or 3 of section XV of ASPR will be used in establishing the grant amount. Costs which are not allowable under those parts may not be included in the grantee organization's cost contribution, if any.

(3) A grantee organization contribution will be subject to audit (see § 273.5(d)).

§ 273.5 Responsibilities and authorities.

(a) The Director, Defense Research and Engineering, shall administer the provisions of this Directive.

(b) The Secretary of Defense or Deputy Secretary of Defense shall approve grants in excess of $1 million.

(c) The Director, Defense Research and Engineering, and the Secretaries of the Military Departments shall exercise the authority vested in the Secretary of Defense by sections 1 and 2 of Pub. L. 85-934 for grants of $1 million or less. This authority may be redelegated to the DoD Component or official research activity responsible for supporting research at educational institutions and other nonprofit organizations (as defined in § 273.3) for grants of $500,000 or less.

(d) The sponsoring agency will perform reviews of grant programs and, when necessary, request an audit of grant costs.

PART 274—REGULATIONS GOVERNING COMPETITIVE BIDDING ON U.S. GOVERNMENT GUARANTEED MILITARY EXPORT LOAN AGREEMENTS

Sec.

274.1 Purpose.
274.2 Definitions.
274.3 Public notice.
274.4 U.S. guaranty.
274.5 Notice of intent to bid.
274.6 Submission of bids.
274.7 Acceptance of bids.
274.8 Bids-revocations-rejections-postponements.
274.9 Delegation of authority to the Secretary of the Treasury.
274.10 Reservations.

AUTHORITY: Sec. 24, Foreign Military Sales Act (22 U.S.C. 2764) and Executive Order 11501 (34 FR 20169).

SOURCE: 38 FR 858, Jan. 5, 1973, unless otherwise noted.

§ 274.1 Purpose.

The purpose of this memorandum is to prescribe regulations under which the Secretary of Defense or his designee may, from time to time, by public notice, offer financial institutions the opportunity to bid on the interest rates for the subject agreements. The bids made will be subject to the terms, conditions, and procedures herein set forth, except as they may be supplemented in the public notice or notices issued by the Secretary of Defense or his designee in connection with particular offerings.

§ 274.2 Definitions.

(a) The terms "public notice," "notices," or "announcement" mean the public notice of invitation to bid and any supplementary or amendatory notices or announcements with respect thereto, including, but not limited to, any statement released to the press by the Secretary of Defense or his designee and notices sent to those who have filed notices of intent to bid or who have filed bids.

(b) The term "Loan Agreement" means the proposed agreement between the foreign government and the private U.S. lender as described in the particular notice of Invitation to Bid.

§ 274.3 Public notice.

(a) Bids hereunder will be invited through a public notice issued by the Secretary of Defense or his designee which will prescribe the amount of the loan for which bids are invited, the repayment schedule, the conditions under which bidders may specify the rate of interest, and the date and closing hour for receipt of bids.

(b) Accompanying the notice will be the form of the Loan Agreement which the successful bidder must execute with the borrower, except for those terms which will be subject to bidding.

§ 274.4 U.S. guaranty.

Under section 24 of the Foreign Military Sales Act (22 U.S.C. 2764), any individual, corporation, partnership, or other juridical entity (excluding U.S. Government agencies) will be guaranteed against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles and defense services to friendly countries and international organizations. Section 24 explicitly provides that guarantees thereunder are backed by the full faith and credit of the United States. Fees in the amount of one-fourth of 1 percent of the amount of credits agreed upon shall be charged for such guaranties.

§ 274.5 Notice of intent to bid.

Any individual or organization, syndicates, or other group which intends to submit a bid, must, when required by the notice, give written notice of such intent on the appropriate form at the place and within the time specified in the public notice. Such notice, which shall be given to the Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045, will not constitute a commitment to bid.

§ 274.6 Submission of bids.

(a) *General.* Bids will be received only at the place specified and not later than the time designated in the public notice. Bids shall be irrevocable.

(b) *Interest rates.* Bids must be expressed in terms of rates of interest not to exceed three decimals, for example, 5.125 percent.

(c) *Group bids.* A syndicate or other group submitting a bid must act through a representative who must be a member of the group. The representative must warrant to the Secretary of Defense or his designee, that he has all necessary power and authority to act for each member and to bind the members jointly and severally. In addition to whatever other data may be required by the Secretary of Defense or his designee, in the case of a syndicate, the representative must file, within 1 hour after the time for opening bids, at the place specified in the public notice for receipt of bids a final statement of the composition of the syndicate membership and the amount of each member's underwriting participation.

§ 274.7 Acceptance of bids.

(a) *Opening bids.* Bids will be opened at the time and place specified in the public notice.

(b) *Acceptance of successful bid.* The Secretary of Defense or his designee will notify any successful bidder of acceptance in the manner and form specified in the public notice.

§ 274.8 Bids-revocations-rejections-postponements.

The Secretary of Defense or his designee in his discretion, may (a) revoke the public notice of invitation to bid at any time before opening bids, (b) return all bids unopened either at or prior to the time specified for their opening, (c) reject any or all bids, (d) postpone the time for presentation and opening of bids, and (e) waive any immaterial or obvious defect in any bid. Any action the Secretary of Defense or his designee may take in these respects shall be final. In the event of a postponement, known bidders will be advised thereof and their bids returned unopened.

§ 274.9 Delegation of authority to the Secretary of the Treasury.

There is hereby delegated to the Secretary or Acting Secretary of the Treasury the authority, in the name of and title of the Secretary of the Treasury, to invite bids under this memorandum, to issue, modify and revoke public notices, notices, and announcements concerning such bids, to prescribe additional terms and conditions with respect thereto, consistent with this memorandum, to receive, return, open, reject, and accept bids, and to take such other actions as may be necessary and proper to execute this delegation of authority to implement this memorandum, excluding, however, the issuance of guaranties under § 274.4.

§ 274.10 Reservations.

The Secretary of Defense reserves the right, at any time, or from time to time, to amend, repeal, supplement, revise or withdraw all or any of the provisions of this memorandum.

PART 275—PRECISE TIME AND TIME INTERVAL (PTTI) STANDARDS AND CALIBRATION FACILITIES FOR USE BY DEPARTMENT OF DEFENSE COMPONENTS

Sec.

275.1 Purpose and applicability.
275.2 Definitions.
275.3 Policy.
275.4 Responsibilities.
275.5 Delineation of functions.

AUTHORITY: 5 U.S.C. 301, 552.

SOURCE: 36 FR 20944, Nov. 2, 1971, unless otherwise noted.

§ 275.1 Purpose and applicability.

This part establishes policy and assigns responsibility to a single Department of Defense Component for establishing, coordinating, and maintaining capabilities for time and time interval (astronomical and atomic) for use by all DoD Components, DoD contractors, and related scientific laboratories.

§ 275.2 Definitions.

For purposes of this part, the following definitions will apply.

(a) "Time" signifies epoch, that is, the designation of an instant on a selected time scale, astronomical or atomic. It is used in the sense of time of day.

(b) "Time Interval" indicates the duration of a segment of time without reference to when the time interval begins and ends. Time interval may be given in seconds of time.

(c) "Standards" signifies the reference values of time and time interval. These standards are determined by astronomical observation and by the operation of atomic clocks. They are disseminated by transport of clocks, radio transmissions, and by other means.

(d) "Precise frequency" signifies a frequency requirement to within one part in 10^{9} of an established time scale.

(e) "Precise time" signifies a time requirement within 10 milliseconds.

§ 275.3 Policy.

(a) Resources for uniform and standard time and time interval operations and research shall be the responsibility of a single DoD Component.

(b) The maximum practicable interchange of time and time interval information shall be effected throughout the DoD.

(c) Maximum practical utilization of interservice support will be achieved as prescribed in Department of Defense Directive 4000.19, "Basic Principles for Interservice and Interdepartmental Logistic Support," August 5, 1967.[1]

§ 275.4 Responsibilities.

(a) The U.S. Naval Observatory (hereafter referred to as the "Observatory") is assigned the responsibility for insuring:

(1) Uniformity in precise time and time interval operations including measurements.

(2) The establishment of overall DoD requirements for time and time interval.

(3) The accomplishment of objectives requiring precise time and time interval with minimum cost.

(b) In carrying out the above responsibilities, the Observatory shall:

(1) Derive and maintain standards of time and time interval, both astronomical and atomic.

(2) Provide coordination of such standards with recognized national and international standards to insure worldwide continuity of precision.

(3) Monitor conferences concerning time and time interval standards.

(4) Advise and provide guidance to DoD Components, contractors and scientific laboratories on matters concerning time and time interval, and their measurement.

(c) All DoD Components which require, utilize, or distribute time and time interval information or have a need for a specific time scale shall:

(1) Refer time and time interval to the standards established by the Observatory.

(2) Maintain specific time scales such that relationship to the standard established by the Observatory is known.

(3) Prescribe technical requirements for the coordination of techniques, procedures and periodic calibrations of systems.

(4) Promote economy by prescribing requirements for precise time that are consistent with operational and research needs for accuracy.

§ 275.5 Delineation of functions.

(a) The Observatory is the single DoD Component responsible for PTTI management control functions. This responsibility encompasses overall activities requiring time to within ten milliseconds and frequency to within one part in 10^9 of an established time scale. In carrying out these PTTI functions on a common-servicing basis, the Observatory will:

(1) Issue detailed information concerning reference values for PTTI and distribute them by means of controlled radio transmissions and portable atomic clocks.

(2) Promote (i) operational uniformity of PTTI functions, including measurements; (ii) establishment of overall DoD PTTI requirements; and (iii) accomplishment of objectives requiring PTTI at minimum cost.

(3) Monitor DoD research programs concerning PTTI (frequency), in coordination with the Office of the Director of Defense Research and Engineering.

(4) Review (i) existing and future PTTI (frequency) requirements of the DoD user components in order to establish overall DoD requirements and to provide adequate supporting services; and (ii) existing PTTI operations conducted by DoD user components to provide guidance and recommendations to the Assistant to the Secretary of Defense (Telecommunications).

(5) Establish relationships between the DoD and other Federal Government agencies on PTTI matters.

(6) Provide advice and guidance concerning requests for unilateral PTTI (frequency) programs at the direction of Assistant to the Secretary of Defense (Telecommunications).

(7) Participate in PTTI policy negotiations between the DoD and other

---

[1] Filed as part of original. Copies available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, attention: Code 300.

Federal Government agencies and international organizations.

(8) Maintain records of PTTI (frequency) arrangements between the DoD and its contractors and other Federal Government agencies, with the exception of radio frequency assignments.

(b) DoD user components:

(1) DoD Components presently conducting Precise Time and Time Interval operations and research may continue these activities unless otherwise instructed by the Assistant to the Secretary of Defense (Telecommunications).

(2) The Military Departments will assist the Observatory by (i) providing technical information on current and prospective programs involving PTTI applications; and (ii) distributing, monitoring and controlling PTTI services on request, subject to the provisions of this part and the availability of funds.

(c) DoD User Components and contractors will:

(1) Consult the Observatory on any technical and logistic problems arising from obtaining a particular accuracy through radio transmissions and portable atomic clocks.

(2) Use DoD-controlled transmissions to the maximum extent practicable. Other transmissions of time and frequency which have been coordinated with the Observatory may be used when DoD transmissions do not provide adequate coverage.

(3) Refer measurements and contract specifications to DoD standards determined by the Observatory.

(4) Use techniques and procedures described in information documents issued by the Observatory in all cases where such documents satisfy the need.

(5) Notify the Observatory of:

(i) Existing and planned PTTI requirements, including information as to accuracy and stability of needs, measurement techniques planned or in operation, and continuity of service required of the applicable distribution transmission.

(ii) PTTI (frequency) arrangements between DoD user components and contractors and other Federal Government agencies (see (a)(8) of this section); and

(iii) Scheduled scientific and technical meetings on PTTI (frequency).

(6) Consult the Observatory prior to entering into contracts for equipment, research, studies, or services involving PTTI (frequency) in order that maximum use of existing facilities may be assured.

SUBCHAPTER N—COMMERCIAL INSURANCE [RESERVED]

SUBCHAPTER O—MILITARY POSTAL SERVICE [RESERVED]

SUBCHAPTER P—RECORDS

PART 286—DoD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—Policy

Sec.
286.1 Reissuance and purpose.
286.2 Applicability and scope.
286.3 Policy.
286.4 Responsibilities.

Subpart B—General Provisions

286.10 References.
286.11 Purpose and applicability.
286.12 DoD public information.
286.13 Definitions.
286.14 Policy.

Subpart C—FOIA Reading Rooms

286.20 Requirements.
286.21 Indexes.

Subpart D—Exemptions

286.30 General provisions.
286.31 Exemptions.

Subpart E—For Official Use Only

286.40 General provisions.
286.41 Markings.
286.42 Dissemination and transmission.
286.43 Safeguarding FOUO information.
286.44 Termination, disposal and unauthorized disclosure.

Subpart F—Release and Processing Procedures

286.50 General provisions.
286.51 Initial determinations.
286.52 Appeals.
286.53 Judicial actions.

Subpart G—Fee Schedule

286.60 General provisions.
286.61 Collection of fees and fee rates.

Subpart H—Reports

286.70 Reports control.
286.71 Triannual report.

Subpart I—Education and Training

286.80 Responsibility and purpose.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals
Appendix B—Addressing FOIA Requests
Appendix C—Litigation Status Sheet
Appendix D—Annual Report Format
Appendix E—Other Reason Categories
Appendix F—DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs"
Appendix G—Format for Triannual Report
Enclosure 1—DoD Freedom of Information Act Program Components

Authority: 5 U.S.C. 552.

Source: 45 FR 80502, Dec. 5, 1980, unless otherwise noted.

Subpart A—Policy

Authority: 5 U.S.C. 552.

Source: 45 FR 283[illegible] Apr. 29, 1980, unless otherwise noted.

§ 286.1 Reissuance and purpose.

(a) This rule reissues this Part 286; establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program, title 5, U.S.C. section 552; and delegates authorities and responsibilities for the effective administration of the program.

(b) This part also authorizes, in accordance with DoD Directive 5025.1,[1] "Department of Defense Directives System," November 18, 1977, the publication of DoD 5400.7-R, the single DoD regulation on the FOIA Program.

§ 286.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD) and their administrative support agencies, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Communications Agency, Defense Contract Audit Agency, Defense Intelligence Agency, Defense Investigative Service, Defense Logistics Agency, Defense Mapping Agency, and the Defense Nuclear Agency (hereafter referred to as "DoD Components").

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

(b) The National Security Agency records are subject to the provisions of this part unless the records are exempt under Pub. L. 86-36, "National Security Information Exemption".

§ 286.3 Policy.

It is the policy of the Department of Defense to:

(a) Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

(b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by enclosures 2, 3, and 4, those records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

(e) Release records to the public, unless those records are exempt from mandatory disclosure as outlined in enclosure 5.

(f) Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by 32 CFR Part 286a or procedures outlined in this part when they are more advantageous to the requester.

§ 286.4 Responsibilities.

(a) The Assistant Secretary of Defense (Public Affairs) (ASD(PA)) shall:

(1) Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Administer internally the FOIA Program for the OSD, the OJCS and, as an exception to DoD Directive 5100.3,[1] "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980, the Unified Commands (the Specified Commands remain under the Military Departments for FOIA matters).

(4) As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

(b) The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this part.

(c) Heads of DoD Components shall:

(1) Publish in the FEDERAL REGISTER any instructions necessary for the internal administration of this part within a DoD Component that are not prescribed by this part or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) will be published in accordance with 32 CFR Part 296.

(2) Conduct training on the provisions of this part for officials and employees who implement the FOIA.

(3) Submit the reports prescribed in enclosure 6 of this part.

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the FEDERAL REGISTER, the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale.

(5) Maintain and make available for public inspection and copying current indices of these records.

Subpart B—General Provisions

§ 286.10 References.

(a) Title 5, United States Code, Section 552.

---

[1] See footnote 1 to § 286.1(b).

(b) 32 CFR Part 286.

(c) Public Law 86-36, "National Security Information Exemption".

(d) 32 CFR Part 286a.

(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.

(f) Title 5, United States Code, Section 551, "Administrative Procedures Act".

(g) 32 CFR Part 159.

(h) Title 35, United States Code, Sections 181-188, "Patent Secrecy".

(i) Title 43, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data".

(j) Title 18, United States Code, Section 798, "Communication Intelligence".

(k) Title 18, United States Code, Section 3500, "The Jencks Act".

(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970.

(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958.

(o) ACP-121 (United States Supplement 1).

(p) Title 44, United States Code, Chapter 33, "Disposal of Records".

(q) 32 CFR Part 288.

(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(s) DoD 5000.12-M, "DoD Manual for Standard Data Elements," December 1979, authorized by DoD Directive 5000.12, April 27, 1965.

(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 197

(u) DoD Handbook 7220.9-H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971.

§ 286.11 Purpose and Applicability.

(a) The purpose of this part is to provide policies and procedures for the DoD implementation of the Freedom of Information Act, § 286.10 (a) and (b), and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* (1) This part applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this part the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 1.

(2) The National Security Agency records are subject to the provisions of this regulation, only to the extent the records are not exempt under Pub. L. 86-36 (§ 286.10(c)).

§ 286.12 DoD Public Information.

(a) *Public Information.* The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control System.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this regulation or under the Privacy Act, when the request is from the subject of the records requested.

§ 286.13 Definitions.

(a) *Definitions.* As used in this part the following terms and meanings shall be applicable.

(b) *FOIA Request.* A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, Part 286, this subchapter, or DoD Component supplementing regulations or instructions.

(c) *Agency Record.* (1) The products of data compilation, regardless of physical form or characteristics made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

(vi) Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be in the possession or control of Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(d) *DoD Component.* An element of the Department of Defense, as defined in § 286.10(b), authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

(e) *Initial Denial Authority.* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(f) *Appellate Authority.* The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

(g) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 286.14 Policy.

(a) *Compliance with the Freedom of Information Act.* DoD personnel are expected to comply with the provisions of the FOIA and this regulation

BEST COPY AVAILABLE

in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt Action on Requests.* When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by § 286(a) outlined in this part, provided such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of Exemptions.* Records that may be withheld under the exemptions outlined in § 286.30 of this part shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Exempt records released pursuant to this part or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with § 286.60(b).

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the

defect. The defect should be highlighted in a specificity letter, asked the requester to provide the type of information outlined below in paragraph (h)(2) of this section. Components are not obligated to act on the request until the requester responds to the specificity letter.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record—memorandum, title, index citation, subject area, date the record was created and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

(4) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate

contracting officer and the requester shall be notified of the referral.

(5) Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this part. These time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(j) *Fee Assessment.* (1) Fees may not be used to discourage requests, and to this end FOIA fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in § 286.60 of this part.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Components may require payment of all or a portion of estimated fees before processing a request.

(v) Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

(k) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

(l) *Unified and Specified Commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (§ 286.10(e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with § 286 and this part. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(m) *Records Management.* FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules.

[45 FR 80502, Dec. 5, 1980, as amended at 46 FR 14891, Mar. 3, 1981]

Subpart C—FOIA Reading Rooms

§ 286.20 Requirements.

(a) *Reading Room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of § 286.60 of this part.

(b) *Material Availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the FEDERAL REGISTER a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, § 286.10(f), that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.21 Indexes.

(a) *"(a)(2)" Materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.20(a) an index of materials described in § 286.20(b) that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the FEDERAL REGISTER an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in § 286.60 of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other Materials.* (1) Any available index of DoD Component material published in the FEDERAL REGISTER, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart D—Exemptions

§ 286.30 General provisions.

(a) *General.* Records that meet the exemption criteria in § 286.31 of this part may be withheld from public disclosure and need not be published in the FEDERAL REGISTER, made available in a library reading room, or provided in response to an FOIA request.

(b) *Significant and legitimate Government purpose.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this part, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

§ 286.31 Exemptions.

(a) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as 32 CFR Part 159. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in 32 CFR 159.21(e)(6) apply.

(2) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense

and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86-36, Section 6 (§ 286.10(c)).

(ii) Patent Secrecy, 35 U.S.C. 181-188 (§ 286.10(h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (§ 286.10(i)).

(iv) Communication Intelligence, 18 U.S.C. 798 (§ 286.10(j)).

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(5) *Number 5.* Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies as defined in 5 U.S.C. 552(e) (§ 286.10(a)) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with 32 CFR Part 286a (§ 286.10(d)).

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) This exemption applies, however, only to the extent that release of a record or portion of a record would:

(A) Interfere with enforcement proceedings.

(B) Deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Disclose the identity of a confidential source.

(E) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

(G) Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law, such as, the Jencks Act, 18 U.S.C. 3500 (§ 286.10(k)), is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by 32 CFR Part 286a (§ 286.10(d)).

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

[45 FR 80502, Dec. 5, 1980, as amended at 46 FR 37642, July 22, 1981]

Subpart E—For Official Use Only

§ 286.40 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an pseudo form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (§ 286.10(a)).

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (§ 286.10(l)) shall bear that statement and shall not be marked FOUO.

§ 286.41 Markings.

(a) *Location of Markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

> This document contains information Exempt From Mandatory Disclosure under the FOIA. Exemptions . . . apply.

§ 286.42 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act.

Records thus transmitted shall be marked. "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (§ 286.10(m)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (§ 286.10(n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO Information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically Transmitted Messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (U.S. Supp. 1) (§ 286.10(o)) for FOUO information.

§ 286.43 Safeguarding FOUO Information.

(a) *During Duty Hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

(b) *During Nonduty Hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86-36 (§ 286.10(c)) shall meet the safeguards outlined in any system notice for that group of records.

§ 286.44 Termination, disposal and unauthorized disclosure.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with disposal standards estab-

lished under 44 U.S.C. Chapter 33 (§ 286.10(p)). as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart F—Release and Processing Procedures

§ 286.50 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in § 286.30 of this part, and a significant and legitimate government purpose is served by withholding it.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

(b) *Requests from private citizens.* The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.14(f).

(c) *Requests from Government officials.* Requests from officials of Federal, State, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged release to officials.* (1) Subject to the provisions of 32 CFR 159 (§ 286.10(g)), applicable to classified information, DoD Directive 5400.11 (§ 286.10(d)), applicable to personal privacy, or other applicable law, records exempt from release under § 286.30 of this part may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, State or Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4 (§ 286.10(m)).

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To State and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of § 286.50(d)(2) that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 286.51 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this regulation is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are six reasons provided by the FOIA for not complying with a request for a record. They are:

(1) The information requested is not a record within the meaning of the FOIA and this part.

(2) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(4) The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

(5) The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

(6) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial Tests.* To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in § 286.30 of this part.

(2) A significant and legitimate government purpose is served by withholding the record.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

(e) *Response to requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is

based on the significant and legitimate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(i) All fees due have been received.

(ii) Fees have been waived because they fall below the automatic fee waiver threshold.

(iii) A request for waiver has been denied.

(iv) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(v) Fees due in a specified amount have not been received.

(5) The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(4) As an alternative to the taking of formal extensions of time as described in § 286.51(f)(1), (2) and (3) of this part, the FOIA coordinating office may negotiate formal extensions in time with requester.

(g) *Misdirected Requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. Government Source.* When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

(1) *Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

(2) *Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

§ 286.52 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of Receipt.* FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time Limits.* (1) The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in Responding to an Appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.51(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.51(f), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this part and the significant and legitimate government purpose served by its withholding.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

§ 286.53 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the Court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secertary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart G—Fee Schedule

§ 286.60 General provisions.

(a) *Application.* The fees described in this part apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as 32 CFR Part 286 (§ 286.10(q)).

(b) *Fee assessment.* (1) Minimum fees shall not be charged.

(2) When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting in behalf of a single requester in an effort to take advantage of the waiver may create a situation in which waiver should be denied by the Component.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

(i) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(ii) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

(iii) The records are to be made available in response to a news media requester whose requests under this part are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(A) The fee charges exceed the fee waiver threshold of $30,000; and

(B) Either the requested record does not contain information that can be considered as primarily benefiting the general public, or the search for the requested record requires an inordinate amount of DOD Component personnel time, and impacts adversely on the DOD Component concerned in accomplishing its primary functional missions.

(iv) [Reserved]

(v) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(vi) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

(c) *Computation of fees.* The fee schedule contained in this part is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

[45 FR 80502, Dec. 5, 1980, as amended at 46 FR 14891, Mar. 3, 1981]

§ 286.61 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

(b) *Search Fees* (1) Manual search:

Type	Grade	Hourly rate [1]
Clerical	E9/GS8 and below	8
Professional	01-06/GS9—GS-15	16
Executive	07/GS16/ES1 and above	26

[1] Dollars

(2) Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records or personnel to the search site may be included.

(c) *Duplication fees.*

Type and Cost Per Page (Cents)

Printed Material—01
Office Copy—10
Microfiche—25

(d) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(e) *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Subpart H—Reports

§ 286.70 Reports control.

(a) *General.* The reporting requirement outlined in this part is assigned Report Control Symbol DD-PA(TRA&A) 1365.

ANNUAL REPORT

(b) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (§ 286.10(r)). The standard data elements are contained in DoD 5000.12-M (§ 286.10(s)).

(c) *Annual report content.* (1) The annual report shall contain the following: (i) *Item 1.* Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

NOTE: A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

(ii) *Item 2.* Provide statistics on the specific authorities—statutory exemptions, statutes, and categories of other reasons used in the totals above.

(A) *Item 2(a).* Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(B) *Item 2(b).* List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(C) *Item 2(c).* Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Part (the total will equal the number reported in Item 1).

(iii) *Item 3.* Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

(iv) *Item 4.* Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

(v) *Item 5.* Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

(vi) *Item 6.* Repeat item 3 for appellate authorities including both subcolumnar statistics.

(vii) *Item 7.* When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(viii) *Item 8.* List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the Federal Register reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

(ix) *Item 9.* The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

(x) *Item 10.* The following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(A) *Item 10(a).* List all new categories of records now being released in whole or in part under FOIA.

(B) *Item 10(b).* The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(C) *Item 10(c).* Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(D) *Item 10(d).* Append a copy of all unpublished (not announced in the Federal Register) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level of the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(E) *Item 10(e).* Any other information, opinion, or recommendations considered pertinent by the DoD Component.

(xi) *Item 11.* Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

(xii) Statistical data required by the items listed above shall be prepared in the format shown in Appendix D.

§ 286.71 Triannual report.

(a) *General.* A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas:

(1) Costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

(b) *Time of report.* Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sept-Dec) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

(c) *Triannual report outline.* (1) The Triannual Report shall include the following: Reporting Activity: Period of Report:

(i) Cost of Routine Requests Processed: No. of reportable requests × (cost factor per request) $———

(ii) Personnel Costs (Civilian and Military): (A) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: ——— Cost: $———

(B) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

Search Time Costs: ———

Review and Excising: ———

Coordination and Approval/Denial Decision Costs: ———

Correspondence and Form Preparation: ———

Other Activity Costs: ———

Total Manhour Costs: $———

(C) Application of Overhead: (Subtotal a) + (Subtotal b) × (overhead rate): $———

Total of Direct Personnel Costs and Overhead: $———

(iii) Other Case Related Costs:

(A) Computer $———

(B) Office Copy Reproduction $———

(C) Microfiche Reproduction $———

(D) Cost of Printed Records $———

Total of Other Costs: $———

(iv) Other Operating Costs:

(A) Reporting Costs [1]

Operational ———

User ———

Overhead ———

((1) + (2) × (overhead rate)) ——— $———

(B) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $———

(Subtotal a) + (Subtotal b) $———

(v) Summary:

(A) Total Costs of Sections 1 through 4, above $———

(B) Amount Collected from Requesters this Reporting Period: Search ——— Copy ——— Total: $———

(C) No. of Requests Processed During this Reporting Period: Reportable Requests ——— Appeals ——— Total: $———

(2) A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.

(3) Format and instructions for the Triannual report are at Appendix G.

Subpart I—Education and Training

§ 286.80 Responsibility and purpose.

(a) *Responsibility.* The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

(e) *Uniformity of legal interpretation.* In accordance with Subpart A of this part (§ 286.10(b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal

---

[1] See DoD Instruction 5000.22 (§ 286.10(t)). In the report for the last 4-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

BEST COPY AVAILABLE

position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. *General.* a. In accordance with Subpart A of this part (§ 286.10(b)), and this part the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (§ 286.10(c)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with Subpart A of this part (§ 286.10(b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. *Processing procedures.* A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in § 286.30 of this part and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this part.

3. *Responsibilities of commands.* Unified Commanders in Chief shall: (a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, DC 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. *Fees for FOI Requests.* The fees charged for requested records shall be in accordance with § 286.60 of this part.

5. *Communications.* Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. *Reporting Requirements.* a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in § 286.70 of this part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January-April, May-August, September-December are required within 30 days after the close of the reporting period. The first report is due for the period May-August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

Appendix B—Addressing FOIA Requests

1. *General.* a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central respository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. *Listing of DoD Component Addresses for FOI Requests.* a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.* This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, DC 20301.

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG-AMR-S), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, DC 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, DC 20330, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, DC 20305.

f. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS-2A), Washington, DC 20301.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (D0020), 1900 Half St., S.W., Washington, DC 20314.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA-XA), Cameron Station, Alexandria, Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, NW, Washington, DC 20305.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, DC 20305.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. *Other Addresses.* a. *Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* FOI requests for CHAMPUS records may be sent to the

Director, OCHAMPUS, Denver, Colorado 80240.

b. *National Guard Bureau.* FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS-DA), Room 2C-362, Pentagon, Washington, DC 20301.

c. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Revenue, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, DC 20301.

APPENDIX C—LITIGATION STATUS SHEET

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
    a. Date Complaint Filed
    b. Court
    c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
    a. Court's Finding
    b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
    a. Date Complaint Filed
    b. Court
    c. Case File Number [1]
    d. Court's Finding
    e. Disciplinary Action (as appropriate)

APPENDIX D—ANNUAL REPORT FORMAT

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

Reporting* Activity	*Total Demands*	Completed	*Reasons*
	Completed Public Requests	Reportable Requests	Statutory Exemption + Other = Total

Item 2(a)

Exemptions Invoked on Initial Determinations

Exemption by Number (552(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting* Activity	Statute	Number of Times

Item 2(c)

Other Reasons

---

[1] Number used by component for reference purposes.

BEST COPY AVAILABLE

Reporting* Activity	Category*	Total

1 2 3 4 5

Item

Initial Denial Officials by Participation

A. Total IDAs authorized
B. IDAs involved in adverse determinations

Name	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 4

Number of Appeals and Results

Reporting* Activity	Number of Appeals			*Total*
	Granted	Granted in Part	Denied	

Item 5(a)

Exemptions Invoked on Appeal Determinations

Exemptions by Number (522(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting* Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

BEST COPY AVAILABLE

Reporting* Activity	Category*	Total
	1 2 3 4 5	

Item 6

Participation of Appellate Authorities
(those responsible for denials in whole or in part)

Name	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting* Activity	Document Identification	Fed. Reg. Ref.

Item 10A

Availability of Records

(New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

Reporting* Activity	Location	I Unusual Circumstances		II and III Court	
		Volume	Consultation	Involvement	Total

Item 10D

Internal Memoranda

(Including Directives not Published in Federal Register)

Reporting* Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

NOTE: Items marked with an asterisk (*) have been registered in the DoD data element program.

APPENDIX E—OTHER REASON CATEGORIES

1. *Transferred Requests*

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. *Lack of Records*

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of Requester to Reasonably Describe Record*

This category is specifically based on section 552(a)(3)(a) of the FOIA (§ 286.10(a)).

4. *Other Failures by Requesters to Comply with Published Rules or Directives*

This category is based on section 552(a)(3)(b) of the FOIA (§ 286.10(a)) and includes instances of failures to follow published rules concerning time, place, fees, and procedures.

5. *Request Withdrawn by Requester*

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

SEE INSTRUCTIONS ON BACK OF PAGE

1 REQUEST NO.	2 TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3 DATE COMPLETED (yr., mo., day)

4 CLERICAL HOURS *(E-9/GS-6 AND BELOW)*	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 8.00	=	*
REVIEW/EXCISING					
CORRESPONDENCE AND FORMS PREPARATION					
OTHER ACTIVITY					

5 PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 16.00	=	*
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL					
OTHER ACTIVITY					

6 EXECUTIVE HOURS *(O-7/GS-16 AND ABOVE)*	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING		X	$ 26.00	=	
COORDINATION/APPROVAL/DENIAL					

7 COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		= *	

8 OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	10	= *	

9 MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	25	= *	

10 PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS		X	01	*	
PUBLICATIONS				= *	
REPORTS				*	

11 *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	*
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	☐ Y ☐ N

* *Chargeable to the Requester*

DD FORM 1 JAN 80 2086

INSTRUCTIONS

PURPOSE: This form is used to record costs associated with the processing of a Freedom of Information request.

1. REQUEST NUMBER—First two digits will express CY followed by dash (–) and Component's request number, i.e., 79-001.

*2. TYPE OF REQUEST—Check the appropriate block to indicate initial request or appeal of a denial.

*3. DATE COMPLETED—Enter year, month and day, i.e., 79/06/21.

*4. CLERICAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

SEARCH—Time spent in locating from the files the requested information.

REVIEW/EXCISING—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

CORRESPONDENCE & FORMS PREPARATION—Time spent in preparing the necessary correspondence and forms to answer the request.

OTHER ACTIVITY—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. PROFESSIONAL HOURS—For each applicable acitivity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

REVIEW/EXCISING, AND OTHER ACTIVITY—See explanation above.

COORDINATION/APPROVAL/DENIAL—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. EXECUTIVE HOURS—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

REVIEW/EXCISING AND COORDINATION/APPROVAL/DENIAL—See explanation above.

—Multiply the time in the total hours column in each cateogry by the hourly rate and enter the cost figures for each category.

*7. COMPUTER SEARCH—Enter the time to the nearest 15 minutes in the total hours column.

—Multiply by the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. OFFICE COPY REPRODUCTION—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

9. MICROFICHE REPRODUCTION—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. PRINTED RECORDS—Enter total pages in each category. The categories are:

FORMS (*Include any type of printed forms*).

PUBLICATIONS (*Include any type of bound document, such as directives, regulations, studies, etc.*)

REPORTS (*Include any type of memorandum, staff action paper, etc.*)

—Multiply the total number of pages in each cateogry by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. FOR FOI OFFICE USE ONLY—

a. SEARCH FEES PAID—Enter total search fees paid by the requester.

b. COPY FEES PAID—Enter the total of copy fees paid by the requester.

c. TOTAL PAID—Add search fees paid and copy fees paid. Enter total in the total paid block.

*d. DATE PAID—Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. TOTAL COLLECTABLE COSTS—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. TOTAL PROCESSING COSTS—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. TOTAL CHARGED—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

*h. FEES WAVIED/REDUCED—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

NOTE: All items marked with an asterisk (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search, Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

APPENDIX G—FORMAT FOR TRIANNUAL REPORT

Reporting Activity:*

Period of Report:

A. Cost of Routine Requests Processed: No. of Reportable Requests × (cost factor per request) $———

B. Personnel Costs (Civilian and Military):

(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:

Cost: $———

(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(a) Search Time Costs: ———

(b) Review and Excising: ———

(c) Coordination and Approval/Denial Decision Costs: ———

(d) Correspondence and Form Preparation Costs: ———

(e) Other Activity Costs: ———

Total Manhour Costs: $———

(3) Application of Overhead: (Sub-total A) + (Sub-total B) × (overhead rate): $———

Total of Direct Personnel Costs and Overhead: $———

C. Other Case Related Costs:

(1) Computer* $———

(2) Office Copy Reproduction* $———

(3) Microfiche Reproduction* $———

(4) Cost of Printed Records* $———

Total of Other Costs: $———

D. Other Operating Costs:

(1) Reporting Costs [1]

(a) Operational ———

(b) User ———

(c) Overhead ((a) + (b) × (overhead rate)) ———

$———

(2) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $———

(Sub-total (1)) + (Sub-total (2)) $———

E. Summary

(1) Total Costs of Sections A through D above $———

(2) Amount Collected from Requesters this Reporting Period: Search ——— Copy ——— Total: $———

(3) No. of Requests Processed During this Reporting Period: Reportable Requests ——— Appeals ——— Total: ———

NOTE: Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

INSTRUCTIONS FOR TRIANNUAL FOI REPORT

1. *General*

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. *Section A*

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. *Section B*

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

---

[1] See DoD Instruction 5000.22 (§ 286.10(t)). In the report for the last four-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

Sample Computation [1]

[Air Force]

Grade/step	No.		⅓ annual wage		Percent of time		Cost
0-4	1	×	$7,697	×	25	=	$1,924
0-3	1	×	6,459	×	50	=	3,230
GS-9(5)	1	×	4,844	×	100	=	4,844
GS-4(3)	1	×	2,701	×	25(2)	=	1,350
					225		11,348

Man-years = 225 ÷ 100 ÷ 3 = 0.75

[1] (a) Military Grades—use DoD Accounting Guidance Handbook (DoD 7220.9-H, Sec. 252 (§ 286.10(u))

(b) Civilian Grades—use Office of Personnel Management Salary Table

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B. (2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2) (b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours 2071.75 × $8.00 = $16,574.00.

Professional Search hours 910.20 × $16.00 = $14,563.20.

(1) Search time costs = $31,137.20.

d. Section B. (3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. *Section C*

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. *Section D*

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. *Section E*

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

ENCLOSURE 1—DOD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS

Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff/Unified Commands and Other Agencies Assigned to OSD for Administrative Support.

Department of the Army; Department of the Navy; Department of the Air Force; Defense Communications Agency; Defense Contract Audit Agency; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; National Security Agency.

PART 286a—DOD PRIVACY PROGRAM

Subpart A—General Provisions

Sec.
286a.1 Reissuance and purpose.
286a.2 Applicability and scope.
286a.3 Definitions.
286a.4 Policy.
286a.5 Organization.
286a.6 Responsibilities.

Subpart B—Systems of Records

286a.10 General.
286a.11 Standards of accuracy.
286a.12 Government contractors.
286a.13 Safeguarding personal information.

Subpart C—Collecting Personal Information

286a.20 General considerations.
286a.21 Forms.

Subpart D—Access by Individuals

286a.30 Individual access to personal information.
286a.31 Denial of individual access.
286a.32 Amendment of records.

Sec.
286a.33 Reproduction fees.

Supart E—Disclosure of Personal Information to Other Agencies and Third Parties

286a.40 Conditions of disclosure.
286a.41 Nonconsensual disclosures.
286a.42 Disclosures to commercial enterprises.
286a.43 Disclosures to the public from health care records.
286a.44 Disclosure accounting.

Subpart F—Exemptions

286a.50 Use and establishment of exemptions.
286a.51 General exemptions.
286a.52 Specific exemptions.

Subpart G—Publication Requirements

286a.60 FEDERAL REGISTER publication.
286a.61 Exemption rules.
286a.62 System notices.
286a.63 New and altered record systems.
286a.64 Amendment and deletion of systems notices.

Subpart H—Training Requirements

286a.70 Statutory training requirements.
286a.71 OMB training guidelines.
286a.72 DoD training programs.
286a.73 Training methodology and procedures.
286a.74 Funding for training.

Subpart I—Reports

286a.80 Requirement for reports.
286a.81 Suspense for submission of reports.
286a.82 Reports control symbol.

Subpart J—Inspections

286a.90 Privacy Act inspections.
286a.91 Inspection reporting.

Subpart K—Privacy Act Enforcement Actions

286a.100 Administrative remedies.
286a.101 Civil actions.
286a.102 Civil remedies.
286a.103 Criminal penalties.
286a.104 Litigation status sheet.

Subpart L—Matching Program Procedures

286a.110 OMB Matching guidelines.
286a.111 Requesting matching programs.
286a.112 Time limits for submitting matching reports.
286a.113 Matching programs among DoD Components.
286a.114 Annual review of systems of records.

APPENDIX A—SPECIAL CONSIDERATIONS FOR SAFEGUARDING PERSONAL INFORMATION IN ADP SYSTEMS
APPENDIX B—SPECIAL CONSIDERATIONS FOR SAFEGUARDING PERSONAL INFORMATION DURING WORD PROCESSING
APPENDIX C—DOD BLANKET ROUTINE USES
APPENDIX D—PROVISIONS OF THE PRIVACY ACT FROM WHICH A GENERAL OR SPECIFIC EXEMPTION MAY BE CLAIMED
APPENDIX E—SAMPLE OF NEW OR ALTERED SYSTEM OF RECORDS NOTICE IN FEDERAL REGISTER FORMAT
APPENDIX F—FORMAT FOR NEW OR ALTERED SYSTEM REPORT
APPENDIX G—SAMPLE DELETIONS AND AMENDMENTS TO SYSTEMS NOTICES IN FEDERAL REGISTER FORMAT
APPENDIX H—LITIGATION STATUS SHEET
APPENDIX I—OFFICE OF MANAGEMENT AND BUDGET (OMB) MATCHING GUIDELINES

AUTHORITY: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 51 FR 2364, Jan. 16, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 286a.1 Reissuance and purpose.

(a) This part is reissued to consolidate into a single document (32 CFR Part 286a) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 522a,) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11, June 9, 1982, and 5400.11-R, August 31, 1983, both entitled: "Department of the Defense Privacy Program."

(b) Its purpose is to delegate authorities and assign responsibilities for the administration of the DoD Privacy Program and to prescribe uniform procedures for DoD Components consistent with DoD 5025.1-M, "Directives Systems Procedures," April 1981.

§ 286a.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). This part is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within their Components. Such instructions will not conflict with the provisions of this part.

(b) The DoD Privacy Program is applicable, but not limited, to the following DoD Components:

(1) Office of the Secretary of Defense and its field activities;

(2) Department of the Army;

(3) Department of the Navy;

(4) Department of the Air Force;

(5) U.S. Marine Corps,

(6) Organization of the Joint Chiefs of Staff;

(7) Unified and Specified Commands;

(8) Office of the Inspector General, DoD;

(9) Defense Advanced Research Projects Agency;

(10) Defense Communications Agency;

(11) Defense Contract Audit Agency;

(12) Defense Intelligence Agency;

(13) Defense Investigative Service;

(14) Defense Logistics Agency;

(15) Defense Mapping Agency;

(16) Defense Nuclear Agency;

(17) Defense Security Assistance Agency;

(18) National Security Agency/Central Security Service;

(19) Uniformed Services University of the Health Sciences.

(c) The provisions of this part shall be made applicable by contract or other legally binding action to U.S. Government contractors whenever a DoD contract is let for the operation of a system of records. For purposes of liability under the Privacy Act of 1974 (5 U.S.C. 552a) the employees of the contractor are considered employees of the contracting DoD Component. See also § 286a.12.

(d) This part does not apply to:

(1) Requests for information from records maintained by the National Security Agency pursuant to Pub. L. 86-36, "National Security Information Exemption," May 29, 1959, and Pub. L. 88-290, "Personnel Security Procedures in the National Security Agency," March 26, 1964. All other systems of records maintained by the Agency are subject to the provisions of this part.

(2) Requests for information from systems of records controlled by the Office of Personnel Management (OPM), although maintained by a DoD Component. These are processed under the applicable parts of the OPM's Federal Personnel Manual (5 CFR Part 297).

(3) Requests for personal information from the General Accounting Office (GAO). These are processed in accordance with DoD Directive 7650.1, "General Accounting Office Access to Records," August 26, 1982.

(4) Requests for personal information from Congress. These are processed in accordance with DoD Directive 5400.4, "Provisions of Information to Congress," January 30, 1978, except for those specific provisions in Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties.

(5) Requests for information made under the Freedom of Information Act (5 U.S.C. 552). These are processed in accordance with "DoD Freedom of Information Act Program" (32 CFR Part 286).

§ 286a.3 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual (see also paragraph (h) of this section).

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentialness if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. All members of U.S. Armed Forces are considered individuals for Privacy Act purposes. No rights are vested in the representative of a dead person under this part and the term "individual" does not embrace an individual acting in an interpersonal capacity, for example, sole proprietorship or partnership.

Individual access. Access to information pertaining to the individual by the individual or his designated agent or legal guardian.

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to the "DoD Information Security Program Regulation": (32 CFR Part 159).

Personal information. Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

Privacy Act. The Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System of records. A group of records under the control of a DoD Component from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the FEDERAL REGISTER.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programable software, handwiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

§ 286a.4 Policy.

(a) *General policy.* It is the policy of the Department of Defense to safeguard personal information contained in any system of records maintained by DoD Components and to make that information available to the individual to whom it pertains to the maximum extent practicable.

(b) *Permit individual access and amendment.* Individuals are permitted:

(1) To determine what records pertaining to them are being collected, maintained, used, or disseminated.

(2) To gain access to the information pertaining to them maintained in any system of records, and to correct or amend that information.

(3) To obtain an accounting of all disclosures of the information pertaining to them except when disclosures are made to:

(i) DoD personnel in the course of their official duties;

(ii) Under the "DoD Freedom of Information Act Program" (32 CFR Part 286);

(iii) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States for civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the DoD activity which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(4) To appeal any refusal to grant access to or amend any record pertaining to them, and to file a statement of disagreement with the record in the event amendment is refused.

(c) *Limit collection, maintenance, use, and dissemination of personal information.* DoD Components are required:

(1) To collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(2) To collect personal information directly from the individual to whom it pertains to the greatest extent practical.

(3) To inform individuals who are asked to supply personal information for inclusion in any system of records:

(i) The authority for the solicitation;

(ii) Whether furnishing the information is mandatory or voluntary;

(iii) The intended uses of the information;

(iv) The routine disclosures of the information that may be made outside the Department of Defense; and

(v) The effect on the individual of not providing all or any part of the requested information.

(4) To ensure that all records used in making determinations about individuals are accurate, relevant, timely, and complete.

(5) To make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which the record is being maintained before making them available to any recipients outside the Department of Defense, other than a federal agency, unless the disclosure is made under 32 CFR Part 286.

(6) To keep no record that describes how individuals exercise their rights guaranteed by the First Amendment of the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertains, or the record is pertinent to and within the scope of an authorized law enforcement activity.

(7) To make reasonable efforts, when appropriate, to notify individuals whenever records pertaining to them are made available under compulsory legal process, if such process is a matter of public record.

(8) To establish safeguards to ensure the security of personal information and to protect this information from

threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(9) To establish rules of conduct for DoD personnel involved in the design, development, operation, or maintenance of any system of records and to train them in these rules of conduct.

(d) *Required public notice and publication.* DoD Components are required to publish in the FEDERAL REGISTER:

(i) A notice of the existence and character of every system of records maintained.

(ii) A notice of the establishment of any new or revised system of records.

(iii) At least 30 days before adoption, advance notice for public comment of any new or intended changes to the routine uses of the information in existing system of records including the categories of users and the purposes of such use.

(e) *Permit exempting eligible systems of records.* DoD Components may exempt from certain specific provisions of the Privacy Act (5 U.S.C. 552a) eligible systems of records, but only when there is an important public purpose to be served and specific statutory for the exemption exists.

(f) *May require annual and other reports.* DoD Components shall furnish the Privacy Office that information required to complete any reports required by the Office of Management and Budget or other authorities.

§ 286a.5 Organization.

(a) *Defense Privacy Board.* Membership of the board shall consist of the Executive Secretary and representatives designated by the Secretaries of the Military Departments; the Assistant Secretary of Defense (Comptroller) (whose designee shall serve as chairman); the Assistant Secretary of Defense (Force Management and Personnel); the General Counsel, Department of Defense; and the Director, Defense Logistics Agency;

(b) *The Defense Privacy Office.* The office shall consist of a Director, who shall also function as the Executive Secretary of the Defense Privacy Board, and his staff.

(c) *The Defense Privacy Board Legal Committee.* The committee shall be composed of a legal counsel from each of the DoD Components represented on the DoD Privacy Board. The legal counsels shall be appointed by the Executive Secretary in coordination with the Secretaries of the Military Department or the head of the appropriate DoD Components. Other DoD legal counsels may be appointed by the Executive Secretary, after coordination with the appropriate representative of the DoD Component concerned, to serve on the committee.

§ 286a.6 Responsibilities.

(a) *The Assistant Secretary of Defense (Comptroller) (ASD(C)),* or his designee, the *Deputy Assistant Secretary of Defense (Administration) (DASD(A)),* shall:

(1) Direct and administer the DoD Privacy Program.

(2) Develop and maintain DoD Directive 5400.11 and DoD Regulation 5400.11-R (32d CFR Part 286a) consistent with DoD 5025.1-M and other guidance, to ensure timely and uniform implementation of the DoD Privacy Program.

(3) Serve as chairman of the Defense Privacy Board.

(b) *Chairman and members of the Defense Privacy Board* shall:

(1) Serve as the principal policymakers for the DoD Privacy Program and the focal point for implementation of this part.

(2) Ensure that all DoD Components actively participate in establishing policies, procedures, and practices in carrying out the DoD Privacy Program.

(c) *Director, Defense Privacy Office,* shall:

(1) Serve as Executive Secretary and a Member of the Defense Privacy Board.

(2) Monitor implementation of the DoD Privacy Program for the Defense Privacy Board.

(3) Serve as the focal point for the coordination of Privacy Act matters with the Defense Privacy Board; the Defense Privacy Board Legal Committee; the Office of Management and Budget; the General Accounting Office; the Office of the Federal Register, in conjunction with the OSD

Federal Register Liaison Officer, and other federal agencies, as required;

(4) Develop and maintain the DoD Privacy Program, DoD Directive 5400.11 and DoD 5400.11-R (32 CFR Part 286a) consistent with DoD 5025.1-M.

(5) Review DoD Component instructions and related issuances pertaining to the DoD Privacy Program and provide overall guidance to avoid conflict with DoD Privacy Program policy and procedures.

(6) Supervise the implementation of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*); DoD Directive 5400.12, "Obtaining Information from Financial Institutions" (32 CFR Part 294) and any other legislation that impacts directly on individual privacy.

(7) In conjunction with the Office of the Assistant Secretary of Defense (Force Management and Personnel), the Office of the General Counsel, DoD; and other DoD Components:

(i) Ensure that training programs regarding DoD Privacy Program policies and procedures are established for all DoD personnel whose duties involve design, development, operation, and maintenance of any system of records.

(ii) Coordinate on all DoD personnel policies that may affect the DoD Privacy Program.

(8) In conjuction with the Office of the Deputy Assistant Secretary of Defense (Management Systems), Office of the ASD(C), and other DoD Components, ensure that:

(i) All information requirements developed to collect or maintain personal data conform with DoD Privacy Program standards;

(ii) Procedures are developed to protect personal information while it is being processed or stored in automated data processing or word processing centers.

(9) In conjuction with the Office of the ASD (FM&P), the Defense Manpower Data Center (Defense Logistics Agency), and other DoD Components, ensure that procedures developed to collect or maintain personal data for research purposes conform both to the requirements of the research and DoD Privacy Program standards.

(d) *Members of Defense Privacy Board Legal Committee* shall:

(1) Consider legal questions referred to it by the Board regarding the application of the Privacy Act (5 U.S.C. 552a); DoD Directive 5400.11; and DoD 5400.11-R, (this part) and the implementation of the DoD Privacy Program.

(2) Render advisory opinions to the DoD Privacy Board, subject to approval by the General Counsel, Department of Defense.

(e) The *General Counsel, Department of Defense*, shall:

(1) Review the advisory opinions of the Defense Privacy Board Legal Committee to ensure uniformity in legal positions and interpretations rendered.

(2) Be the final approving authority on all advisory legal opinions rendered by the Defense Privacy Board or the Defense Privacy Board Legal Committee regarding the Privacy Act (5 U.S.C. 552a) or its implementation.

(f) The *Head of each DoD Component* shall implement the DoD Privacy Program by carrying out the specific responsibilities set forth in § 286a.4(c) and shall:

(1) Establish an active program to implement the DoD Privacy Program.

(2) Provide adequate funds and personnel to support the Privacy Program.

(3) Designate a senior official to serve as the principal point of contact for DoD Privacy matters and to monitor compliance with the program.

(4) Ensure that DoD Privacy Program compliance is reviewed during the internal inspections conducted by Inspectors General or equivalent inspectors.

(5) Ensure that the DoD Component head, a designee, or an appellant reviews all appeals from denials or refusals by Component officials to amend personal records.

(6) Establish rules of conduct to ensure that:

(i) Only personal information that is relevant and necessary to achieve a purpose required by statute or Executive Order is collected, maintained, used or disseminated.

(ii) Personal information is collected to the greatest extent practicable directly from the individual to whom it pertains.

(iii) No records are maintained describing how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution unless expressly authorized by statute or the individual to whom they pertain or unless the records pertain to and are within the scope of an authorized law enforcement activity.

(iv) Individuals are granted access to records which pertain to them in systems of records unless the system has been exempted from the access provisions of the Privacy Act (5 U.S.C. 552a).

(v) No system of records subject to the Privacy Act (5 U.S.C. 552a) is maintained, used, or disseminated without prior publication of a system notice in the FEDERAL REGISTER.

(vi) All personal information contained in any system of records is safeguarded against unwarranted and unauthorized disclosure.

(vii) Procedures are established that permit an individual to seek the correction or amendment of any record in a system of records pertaining to the individual unless system of records has been exempted from the amendment procedures of the Privacy Act (5 U.S.C. 552a).

(viii) All personnel whose duties involve design, development, operation, and maintenance of any system of records are trained in the rules of conduct established.

(ix) Assist, upon request, the Defense Privacy Board on matters of special interest.

(g) The *System Manager* for any system of records shall:

(1) Ensure that all personnel who either have access to the system of record or who are engaged in developing or supervising procedures for handling records in the system of records in the system of records are aware of their responsibilities for protecting personal information established by the DoD Privacy Program.

(2) Prepare promptly any required new, amended, or altered system notices for the system of records and submit them through channels for publication in the FEDERAL REGISTER.

(3) Notify all Automated Data Processing (ADP) or word processing managers who process information from the system of records that the information is subject to the DoD Privacy Program and the applicable routine uses for the information in the system.

(4) Coordinate with ADP and word processing managers providing services to ensure an adequate risk analysis is conducted.

(5) Coordinate with the servicing ADP and word processing managers to ensure that the system manager is notified when there are changes to processing equipment, hardware or software, and the data base that may require submission of an amended system notice.

(h) *Automated Data Processing (ADP) or Word Processing Managers*, who process information from any system of records, shall:

(1) Ensure that each system manager provides a current system notice or information as to the contents of the system notice for each system of records from which information is to be processed.

(2) Ensure that all personnel who have access to information from a system of records during processing or who are engaged in developing procedures for processing such information are aware of the provisions of the DoD Privacy Program policies and procedures.

(3) Notify promptly the system manager whenever there are changes to processing equipment, hardware or software, and the data base that may require the submission of an amended system notice for any system of records.

(i) *DoD employees* shall:

(1) Not disclosure any personal information contained in any system of records except as authorized in this part.

(2) Not maintain any official files which are retrievable by name or other personal identifier without first ensuring that a notice for the system has been published in the FEDERAL REGISTER.

(3) Report any disclosures of personal information from a system of records or the maintenance of any

system of records that are not authorized by this part to the appropriate Privacy Act officials for his or her action.

Subpart B—Systems of Records

§ 286a.10 General.

(a) *System of records.* To be subject to the provisions of this part a "system of records" must:

(1) Consist of "records" (as defined in § 286a.3(n)) that are retrieved by the name of an individual or some other personal identifier, and

(2) Be under the control of a DoD Component.

(b) *Retrieval practices.* (1) Records in a group of records that *may be* retrieved by a name or personal identifier are not covered by this part even if the records contain personal data and are under control of a DoD Component. The records *must be,* in fact, retrieved by name or other personal identifier to become a system of records for the purpose of this part.

(2) If files that are not retrieved by name or personal identifier are rearranged in such manner that they are retrieved by name or personal identifier, a new systems notice must be submitted in accordance with § 286.63(c) of Subpart G.

(3) If records in a system of records are rearranged so that retrieval is no longer by name or other personal identifier, the records are no longer subject to this part and the system notice for the records shall be deleted in accordance with § 286a.64(c) of Subpart G.

(c) *Relevance and necessity.* Retain in a system of records only that personal information which is relevant and necessary to accomplish a purpose required by a federal statute or an Executive Order.

(d) *Authority to establish systems of records.* Identify the specific statute or the Executive Order that authorize maintaining personal information in each system of records. The existance of a statute or Executive order mandating the maintenance of a system of records does not abrogate the responsibility to ensure that the information in the system of records is relevant and necessary.

(e) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises his or her rights guaranteed by the First Amendment of the U.S. Constitution except when:

(i) Expressly authorized by federal statute;

(ii) Expressly authorized by the individual; or

(iii) Maintenance of the information is pertinent to and within the scope of an authorized law enforcement activity.

(2) First Amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(f) *System manager's evaluation.* (1) Evaluate the information to be included in each new system before establishing the system and evaluate periodically the information contained in each existing system of records for relevancy and necessity. Such a review shall also occur when a system notice amendment or alteration is prepared (see §§ 286a.63 and 286a.64 of Subpart G).

(2) Consider the following:

(i) The relationship of each item of information retained and collected to the purpose for which the system is maintained;

(ii) The specific impact on the purpose or mission of not collecting each category of information contained in the system;

(iii) The possibility of meeting the information requirements through use of information not individually identifiable or through other techniques, such as sampling;

(iv) The length of time each item of personal information must be retained;

(v) The cost of maintaining the information; and

(vi) The necessity and relevancy of the information to the purpose for which it was collected.

(g) *Discontinued information requirements.* (1) Stop collecting immediately any category or item of personal information from which retention is no longer justified. Also excise this in-

BEST COPY AVAILABLE

formation from existing records, when feasible.

(2) Do not destroy any records that must be retained in accordance with disposal authorizations established under 44 U.S.C. 303a, "Examination by the Administrator of General Services of Lists and Schedules of Records Lacking Preservation Value, Disposal of Records."

§ 286a.11 Standards of accuracy.

(a) *Accuracy of information maintained.* Maintain all personal information that is used or may be used to make any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any such determination.

(b) *Accuracy determination before dissemination.* Before disseminating any personal information from a system of records to any person outside the Department of Defense, other than a federal agency, make reasonable efforts to ensure that the information to be disclosed is accurate, relevant, timely, and complete for the purpose it is being maintained (see also § 286a.30(d), Subpart D and § 286a.40(d), Subpart E).

§ 286a.12 Government Contractors.

(a) *Applicability to government contractors.* (1) When a DoD Component contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record system affected are considered to be maintained by the DoD Component and are subject to this part. The Component is responsible for applying the requirements of this part to the contractor. The contractor and its employees are to be considered employees of the DoD Component for purposes of the sanction provisions of the Privacy Act during the performance of the contract. Consistent with the Defense Acquisition Regulation (DAR), § 1.327, "Protection of Individual Privacy" contracts requiring the maintenance of a system of records or the portion of a system of records shall identify specifically the record system and the work to be performed and shall include in the solicitation and resulting contract such terms as are prescribed by the DAR.

(2) If the contractor must use or have access to individually identifiable information subject to this part to perform any part of a contract, and the information would have been collected and maintained by the DoD Component but for the award of the contract, these contractor activities are subject to this Regulation.

(3) The restriction in paragraphs (a) (1) and (2) of § 286a.12 do not apply to records:

(i) Established and maintained to assist in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(ii) Maintained as internal contractor employee records even when used in conjunction with providing goods and services to the Department of Defense; or

(iii) Maintained as training records by an educational organization contracted by a DoD Component to provide training when the records of the contract students are similar to and comingled with training records of other students (for example, admission forms, transcripts, academic counselling and similar records);

(iv) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with the Federal Claims Collection Act of 1966, 31 U.S.C. 952(d).

(4) DoD Components must publish instruction that:

(i) Furnish DoD Privacy Program guidance to their personnel who solicit, award, or administer government contracts;

(ii) Inform prospective contractors of their responsibilities regarding the DoD Privary Program; and

(iii) Establish an internal system of contractor performance review to ensure compliance with the DoD Privacy Program.

(b) *Contracting procedures.* The Defense Systems Acquisition Regulatory Council (DSARC) is responsible for developing the specific policies and procedures to be followed when soliciting bids, awarding contracts or administering contracts that are subject to this part.

(c) *Contractor compliance.* Through the various contract surveillance programs, ensure contractors comply with the procedures established in accordance with paragraph (b) above of this subpart.

(d) *Disclosure of records to contractors.* Disclosure of personal records to a contractor for the use in the performance of any DoD contrtact by a DoD Component is considered a disclosure within the Department of Defense (see § 286a.40(b), Subpart E). The contractor is considered the agent of the contracting DoD Component and to be maintaining and receiving the records for that Component.

§ 286a.13 Safeguarding personal information.

(a) *General responsibilities.* Establish appropriate administrative, technical and physical safeguards to ensure that the records in every system of records are protected from unauthorized alteration or disclosure and that their confidentiality is protected. Protect the records against reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is kept.

(b) *Minimum standards.* (1) Tailor system safeguards to conform to the type of records in the system, the sensitivity of the personal information stored, the storage medium used and, to a degree, the number of records maintained.

(2) Treat all unclassified records that contain personal information that normally would be withheld from the public under Exemption Numbers 6 and 7, of § 286.31, Subpart D of 32 CFR Part 286 (DoD Freedom of Information Act Program) as if they were designated "For Official Use Only" and safeguard them in accordance with the standards established by Subpart E of 32 CFR Part 286 (DoD FOIA Program) even if they are not actually marked "For Official Use Only."

(3) Afford personal information that does not meet the criteria discussed in paragraph (c)(3) of this section that degree of security which provides protection commensurate with the nature and type of information involved.

(4) Special administrative, physical, and technical procedures are required to protect data that is stored or being processed temporarily in an automated data processing (ADP) system or in a word processing activity to protect it against threats unique to those environments (see Appendices A and B).

(5) Tailor safeguards specifically to the vulnerabilities of the system.

(c) *Records disposal.* (1) Dispose of records containing personal data so as to prevent inadvertent compromise. Disposal methods such as tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation are considered adequate if the personal data is rendered unrecognizable or beyond reconstruction.

(2) The transfer of large quantities of records containing personal data (for example, computer cards and printouts) in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under this part. The sheer volume of such transfers make it difficult or impossible to identify readily specific individual records.

(3) When disposing of or destroying large quantities of records containing personal information, care must be exercised to ensure that the bulk of the records is maintained so as to prevent specific records from being readily identified. If bulk is maintained, no special procedures are required. If bulk cannot be maintained or if the form of the records make individually identifiable information easily available, dispose of the record in accordance with paragraph (c)(1) of this section.

Subpart C—Collecting Personal Information

§ 286a.20 General considerations.

(a) *Collect directly from the individual.* Collect to the greatest extent practicable personal information directly from the individual to whom it pertains if the information may be used in making any determination about the rights, privileges, or benefits of the individual under any federal program (see also paragraph (c) of this section).

(b) *Collecting Social Security Numbers (SSNs).* (1) It is unlawful for any federal, state, or local governmental agency to deny an individual any right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, if a federal statute requires that the SSN be furnished or if the SSN is required to verify the identity of the individual in a system of records that was established and in use before January 1, 1975, and the SSN was required as an identifier by a statute or regulation adopted before that date, this restriction does not apply.

(2) When an individual is requested to provide his or her SSN, he or she must be advised:

(i) The uses that will be made of the SSN;

(ii) The statute, regulation, or rule authorizing the solicitation of the SSN; and

(iii) Whether providing the SSN is voluntary or mandatory.

(3) Include in any systems notice for any system of records that contains SSNs a statement indicating the authority for maintaining the SSN and the sources of the SSNs in the system. If the SSN is obtained directly from the individual indicate whether this is voluntary or mandatory.

(4) Executive Order 9397, "Numbering System For Federal Accounts Relating to Individual Persons," November 30, 1943, authorizes solicitation and use of SSNs as numerical identifier for individuals in most Federal records systems. However, it does not provide *mandatory* authority for soliciting SSNs.

(5) Upon entrance into military service or civilian employment with the Department of Defense, individuals are asked to provide their SSNs. The SSN becomes the service or employment number for the individual and is used to establish personnel, financial, medical, and other official records. Provide the notification in paragraph (b)(2) of this section to the individual when originally soliciting his or her SSN. After an individual has provided his or her SSN for the purpose of establishing a record, the notification in paragraph (b)(2) is not required if the individual is only requested to furnish or verify the SSNs for identification purposes in connection with the normal use of his or her records. However, if the SSN is to be written down and retained for any purpose by the requesting official, the individual must be provided the notification required by paragraph (b)(2) of this section.

(6) Consult the Office of Personnel Management, Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735) when soliciting SSNs for use in OPM records systems.

(c) *Collecting personal information from third parties.* It may not be practical to collect personal information directly from the individual in all cases. Some examples of this are:

(1) Verification of information through third party sources for security or employment suitability determinations;

(2) Seeking third party opinions such as supervisory comments as to job knowledge, duty performance, or other opinion-type evaluations;

(3) When obtaining the needed information directly from the individual is exceptionally difficult or may result in unreasonable costs; or

(4) Contacting a third party at the request of the individual to furnish certain information such as exact periods of employment, termination dates, copies of records, or similar information.

(d) *Privacy Act Statements.* (1) When an individual is requested to furnish personal information about himself or herself for inclusion in a system of records, a Privacy Act Statement is required regardless of the medium used to collect the information (forms, personal interviews, stylized formats, telephonic interviews, or other methods). The Privacy Act Statement consists of the elements set forth in paragraph (d)(2) of this section. The statement enables the individual to make an informed decision whether to provide the information requested. If the personal information solicited is not to be incoporated into a system of records, the statement need not be given. However, personal information obtained without a Privacy Act

Statement shall not be incorporated into any system of records. When soliciting SSNs for any purpose, see paragraph (b)(2) of this section.

(2) The Privacy Act Statement shall include:

(i) The specific federal statute or Executive Order that authorizes collection of the requested information (see paragraph (d) of § 286a.10).

(ii) The principal purpose or purposes for which the information is to be used;

(iii) The routine uses that will be made of the information (see § 286a.41(e), Subpart E);

(iv) Whether providing the information is voluntary or mandatory (see paragraph (e) of this section); and

(v) The effects on the individual if he or she chooses not to provide the requested information.

(3) The Privacy Act Statement shall be concise, current, and easily understood.

(4) The Privacy Act statement may appear as a public notice (sign or poster), conspicuously displayed in the area where the information is collected, such as at check-cashing facilities or identification photograph facilities.

(5) The individual normally is not required to sign the Privacy Act Statement.

(6) Provide the individual a written copy of the Privacy Act Statement upon request. This must be done regardless of the method chosen to furnish the initial advisement.

(e) *Mandatory as opposed to voluntary disclosures.* Include in the Privacy Act Statement specifically whether furnishing the requested personal data is mandatory or voluntary. A requirement to furnish personal data is mandatory only when a federal statute, Executive Order, regulation, or other lawful order specifically imposes a duty on the individual to provide the information sought, and the individual is subject to a penalty if he or she fails to provide the requested information. If providing the information is only a condition of or prerequisite to granting a benefit or privilege and the individual has the option of requesting the benefit or privilege, providing the information is always voluntary. However, the loss or denial of the privilege, benefit, or entitlement sought may be listed as a consequence of not furnishing the requested information.

§ 286a.21 Forms.

(a) *DoD forms.* (1) DoD Directive 5000.21, "Forms Management Program" provides guidance for preparing Privacy Act Statements for use with forms (see also paragraph (b)(1) of this section).

(2) When forms are used to collect personal information, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(i) In the body of the form, preferably just below the title so that the reader will be advised of the contents of the statement *before* he or she begins to complete the form;

(ii) On the reverse side of the form with an appropriate annotation under the title giving its location;

(iii) On a tear-off sheet attached to the form; or

(iv) As a separate supplement to the form.

(b) *Forms issued by non-DoD activities.* (1) Forms subject to the Privacy Act issued by other federal agencies have a Privacy Act Statement attached or included. Always ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DoD activity. If the Privacy Act Statement provided is inadequate, the DoD Component concerned shall prepare a new statement or a supplement to the existing statement before using the form.

(2) Forms issued by agencies not subject to the Privacy Act (state, municipal, and other local agencies) do not contain Privacy Act Statements. Before using a form prepared by such agencies to collect personal data subject to this part, an appropriate Privacy Act Statement must be added.

Subpart D—Access by Individuals

§ 286a.30 Individual access to personal information.

(a) *Individual access.* (1) The access provisions of this part are intended for use by individuals about whom records are maintained in systems of records.

Release of personal information to individuals under this part is not considered public release of information.

(2) Make available to the individual to whom the record pertains all of the personal information that can be released consistent with DoD responsibilities.

(b) *Individual requests for access.* Individuals shall address requests for access to personal information in a system of records to the system manager or to the office designated in the DoD Component rules or the system notice.

(c) *Verification of identity.* (1) Before granting access to personal data, an individual may be required to provide reasonable verification of his or her identity.

(2) Identity verification procedures shall not:

(i) Be so complicated as to discourage unnecessarily individuals from seeking access to information about themselves; or

(ii) Be required of an individual seeking access to records which normally would be available under the "DoD Freedom of Information Act Program" (32 CFR Part 286).

(3) Normally, when individuals seek personal access to records pertaining to themselves, identification is made from documents that normally are readily available, such as employee and military identification cards, driver's license, other licenses, permits or passes used for routine identification purposes.

(4) When access is requested by mail, identity verification may consist of the individual providing certain minimum identifying data, such as full name, date and place of birth, or such other personal information necessary to locate the record sought. If the information sought is of a sensitive nature, additional identifying data may be required. If notarization of requests is required, procedures shall be established for an alternate method of verification for individuals who do not have access to notary services, such as military members overseas.

(5) If an individual wishes to be accompanied by a third party when seeking access to his or her records or to have the records released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(6) An individual shall not be refused access to his or her record solely because he or she refuses to divulge his or her SSN unless the SSN is the only method by which retrieval can be made. (See § 286a.20(b)).

(7) The individual is not required to explain or justify his or her need for access to any record under this part.

(8) Only a denial authority may deny access and the denial must be in writing and contain the information required by paragraph (b) of § 286a.31.

(d) *Granting individual access to records.* (1) Grant the individual access to the original record or an exact copy of the original record without any changes or deletions, except when changes or deletions have been made in accordance with paragraph (e) of this section. For the purpose of granting access, a record that has been amended under § 286a.31(b) is considered to be the original. See pargraph (e) of this section for the policy regarding the use of summaries and extracts.

(2) Provide exact copies of the record when furnishing the individual copies of records under this part.

(3) Explain in terms understood by the requestor any record or portion of a record that is not clear.

(e) *Illegible, incomplete, or partially exempt records.* (1) Do not deny an individual access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (for example, deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(2) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(3) When the physical condition of the record or its state makes it necessary to prepare an extract for release, ensure that the extract can be understood by the requester.

(4) Explain to the requester all deletions or changes to the records.

(f) *Access to medical records.* (1) Disclose medical records to the individual to whom they pertain, even if a minor, unless a judgment is made that access to such records could have an adverse effect on the mental or physical health of the individual. Normally, this determination shall be made in consultation with a medical doctor.

(2) If it is determined that the release of the medical information may be harmful to the mental or physical health of the individual:

(i) Send the record to a physician named by the individual; and

(ii) In the transmittal letter to the physician explain why access by the individual without proper professional supervision could be harmful (unless it is obvious from the record).

(3) Do not require the physician to request the records for the individual.

(4) If the individual refuses or fails to designate a physician, the record shall not be provided. Such refusal of access is not considered a denial for Privacy Act reporting purposes. (See paragraph (a) of § 286a.31).

(5) Access to a minor's medical records may be granted to his or her parents or legal guardians. However, observe the following procedures:

(i) In the United States, the laws of the particular state in which the records are located may afford special protection to certain types of medical records (for example, records dealing with treatment for drug or alcohol abuse and certain psychiatric records). Even if the records are maintained by a military medical facilities these statutes may apply.

(ii) For the purposes of parental access to the medical records and medical determinations regarding minors at overseas installation the age of majority is 18 years except when:

(A) A minor at the time he or she sought or consented to the treatment was between 15 and 17 years of age;

(B) The treatment was sought in a program which was authorized by regulation or statute to offer confidentiality of treatment records as a part of the program;

(C) The minor specifically requested or indicated that he or she wished the treatment record to be handled with confidence and not released to a parent or guardian; and

(D) The parent or guardian seeking access does not have the written authorization of the minor or a valid court order granting access.

(iii) If all four of the above conditions are met, the parent or guardian shall be denied access to the medical records of the minor. Do not use these procedures to deny the minor access to his or her own records under this part or any other statutes.

(6) All members of the Military Services and all married persons are not considered minors regardless of age, and the parents of these individuals do not have access to their medical records without written consent of the individual.

(g) *Access to information compiled in anticipation of civil action.* (1) An individual is not entitled under this part to gain access to information compiled in reasonable anticipation of a civil action or proceeding.

(2) The term "civil proceeding" is intended to include quasi-judicial and pretrial judicial proceedings that are the necessary preliminary steps to formal litigation.

(3) Attorney work products prepared in conjunction with quasi-judicial pretrial, and trial proceedings, to include those prepared to advise DoD Component officials of the possible legal consequences of a given course of action, are protected.

(h) *Access to investigatory records.* (1) Requests by individuals for access to investigatory records pertaining to themselves and compiled for law enforcement purposes are processed under this part of the DoD Freedom of Information Program (32 CFR Part 286) depending on which part gives them the greatest degree of access.

(2) Process requests by individuals for access to investigatory record pertaining to themselves compiled for law enforcement purposes and in the custody of law enforcement activities that have been incorporated into systems of records exempted from the access provisions of this part in accordance with section B of Chapter 5 under reference (f). Do not deny an individual access to the record solely because it is in the exempt system, but give him or

her automatically the same access he or she would receive under the Freedom of Information Act (5 U.S.C. 552). (See also paragraph (h) of this section.)

(3) Process requests by individuals for access to investigatory records pertaining to themselves that are in records systems exempted from access provisions under paragraph (a) of § 286a.52, Subpart F, under this part, or the DoD Freedom of Information Act Program (32 CFR Part 286) depending upon which regulation gives the greatest degree of access (see also paragraph (j) of this section).

(4) Refer individual requests for access to investigatory records exempted from access under a general exemption temporarily in the hands of a noninvestigatory element for adjudicative or personnel actions to the originating investigating agency. Inform the requester in writing of these referrals.

(i) *Nonagency records.* (1) Certain documents under the physical control of DoD personnel and used to assist them in performing official functions, are not considered "agency records" within the meaning of this Regulation. Uncirculated personal notes and records that are not disseminated or circulated to any person or organization (for example, personal telephone lists or memory aids) that are retained or discarded at the author's discretion and over which the Component exercises no direct control, are not considered agency records. However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become "agency records," and may be subject to this part.

(2) The personal uncirculated handwritten notes of unit leaders, office supervisors, or military supervisory personnel concerning subordinates are not systems of records within the meaning of this part. Such notes are an extension of the individual's memory. These notes, however, must be maintained and discarded at the discretion of the individual supervisor and not circulated to others. Any established requirement to maintain such notes (such as, written or oral directives, regulations, or command policy) make these notes "agency records" and they then must be made a part of a system of records. If the notes are circulated, they must be made a part of a system of records. Any action that gives personal notes the appearance of official agency records is prohibited, unless the notes have been incorporated into a system of records.

(j) *Relationship between the Privacy Act and the Freedom of Information Act.* (1) Process requests for individual access as follows:

(i) Requests by individuals for access to records pertaining to themselves made under the Freedom of Information Act (5 U.S.C. 552) or the DoD Freedom of Information Act Program (32 CFR Part 286) or DoD Component instuctions implementing the DoD Freedom of Information Act Program are processed under the provisions of that reference.

(ii) Requests by individuals for access to records pertaining to themselves made under the Privacy Act of 1971 (5 U.S.C. 552a), this part, or the DoD Component instructions implementing this part are processed under this part.

(iii) Requests by individuals for access to records about themselves that cite both Acts or the implementing regulations and instructions for both Acts are processed under this part except:

(A) When the access provisions of the DoD Freedom of Information Act Program (32 CFR Part 286) provide a greater degree of access; or

(B) When access to the information sought is controlled by another federal statute.

(C) If the former applies, follow the provisions of 32 CFR Part 286; and if the later applies, follow the access procedures established under the controlling statute.

(iv) Requests by individuals for access to information about themselves in systems of records that do not cite either Act or the implementing regulations or instructions for either Act are processed under the procedures established by this part. However, there is no requirement to cite the specific provisions of this part or the Privacy Act (5 U.S.C. 552a) when responding to such requests. Do not count these requests as Privacy Act request for reporting purposes (see Subpart I).

(2) Do not deny individuals access to personal information concerning themselves that would otherwise be releasable to them under either Act solely because they fail to cite either Act or cite the wrong Act, regulation, or instruction.

(3) Explain to the requester which Act or procedures have been used when granting or denying access under either Act (see also paragraph (j)(1)(iv) of this section).

(k) *Time limits.* Normally acknowledge requests for access within 10 working days after receipt and provide access within 30 working days.

(l) *Privacy case file.* Establish a Privacy Act case file when required (see paragraph (p) of § 286a.32 of this subpart).

§ 286a.31 Denial of individual access.

(a) *Denying individual access.* (1) An individual may be denied formally access to a record pertaining to him or her only if the record:

(i) Was compiled in reasonable anticipation of civil action (see paragraph (g) of § 286a.30)

(ii) Is in a system of records that has been exempted from the access provisions of this regulation under one of the permitted exemptions (see Subpart F).

(iii) Contains classified information that has been exempted from the access provision of this part under blanket exemption for such material claimed for all DoD records system (see §286a.50(c) of Subpart F).

(iv) Is contained in a system of records for which access may be denied under some other federal statute.

(2) Only deny the individual access to those portions of the records from which the denial of access serves some legitimate governmental purpose.

(b) *Other reasons to refuse access.* (1) An individual may be refused access if:

(i) The record is not described well enough to enable it to be located with a reasonable amount of effort on the part of an employee familiar with the file; or

(ii) Access is sought by an individual who fails or refuses to comply with the established procedural requirements, including refusing to name a physician to receive medical records when required (see paragraph (f) of §286a.30) or to pay fees (see §286a.33 of this subpart).

(2) Always explain to the individual the specific reason access has been refused and how he or she may obtain access.

(c) *Notifying the individual.* Formal denials of access must be in writing and include as a minimum:

(1) The name, title or position, and signature of a designated Component denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, including specific citation to the appropriate sections of the Privacy Act (5 U.S.C. 552a) or other statutes, this part, DoD Component instructions or Code of Federal Regulations (CFR) authorizing the denial;

(4) Notice to the individual of his or her right to appeal the denial through the Component appeal procedure within 60 calendar days; and

(5) The title or position and address of the Privacy Act appeals official for the Component.

(d) *DoD Component appeal procedures.* Establish internal appeal procedures that, as a minimum, provide for:

(1) Review by the head of the Component or his or her designee of any appeal by an individual from a denial of access to Component records.

(2) Formal written notification to the individual by the appeal authority that shall:

(i) If the denial is sustained totally or in part, include as a minimum:

(A) The exact reason for denying the appeal to include specific citation to the provisions of the Act or other statute, this part, Component instructions or the CFR upon which the determination is based;

(B) The date of the appeal determination;

(C) The name, title, and signature of the appeal authority;

(D) A statement informing the applicant of his or her right to seek judicial relief.

(ii) If the appeal is granted, notify the individual and provide access to the material to which access has been granted.

(3) The written appeal notification granting or denying access is the final Component action as regards access.

(4) The individual shall file any appeals from denial of access within no less than 60 calendar days of receipt of the denial notification.

(5) Process all appeals within 30 days of receipt unless the appeal authority determines that a fair and equitable review cannot be made within that period. Notify the applicant in writing if additional time is required for the appellate review. The notification must include the reasons for the delay and state when the individual may expect an answer to the appeal.

(e) *Denial of appeals by failure to act.* A requester may consider his or her appeal formally denied if the authority fails:

(1) To act on the appeal within 30 days;

(2) To provide the requester with a notice of extension within 30 days; or

(3) To act within the time limits established in the Component's notice of extension (see paragraph (d)(5) of this section).

(f) *Denying access to OPM records held by DoD Components.* (1) The records in all systems of records maintained in accordance with the OPM government-wide system notices are technically only in the temporary custody of the Department of Defense.

(2) All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735) as well as the applicable Component procedures.

(3) When a DoD Component refuses to grant access to a record in an OPM system, the Component shall instruct the individual to direct his or her appeal to the appropriate Component appeal authority, not the Office of Personnel Management.

(4) The Component is responsible for the administrative review of its denial of access to such records.

§ 286a.32 Amendment of records.

(a) *Individual review and correction.* Individuals are encouraged to review the personnel information being maintained about them by DoD Components periodically and to avail themselves of the procedures established by this part and any other Component regulations to update their records.

(b) *Amending records.* (1) An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of record has been exempted specifically from the amendment procedures of this part under paragraph (b) of § 286a.50, Subpart F. Normally, amendments under this part are limited to correcting factual matters and not matters of official judgment, such as performance ratings, promotion potential, and job performance appraisals.

(2) While a Component may require that the request for amendment be in writing, this requirement shall not be used to discourage individuals from requesting valid amendments or to burden needlessly the amendment process.

(3) A request for amendment must include:

(i) A description of the item or items to be amended;

(ii) The specific reason for the amendment;

(iii) The type of amendment action sought (deletion, correction, or addition); and

(iv) Copies of available documentary evidence supporting the request.

(c) *Burden of proof.* The applicant must support adequately his or her claim.

(d) *Identification of requesters.* (1) Individuals may be required to provide identification to ensure that they are indeed seeking to amend a record pertaining to themselves and not, inadvertently or intentionally, the record of others.

(2) The indentification procedures shall not be used to discourage legitimate requests or to burden needlessly or delay the amendment process. (See paragraph (c) of § 286a.30).

(e) *Limits on attacking evidence previously submitted.* (1) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(2) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination under this part, he or she may challenge the accuracy of the recording of that action.

(f) *Sufficiency of a request to amend.* Consider the following factors when evaluating the sufficiency of a request to amend:

(1) The accuracy of the information itself; and

(2) The relevancy, timeliness, completeness, and necessity of the recorded information for accomplishing an assigned mission or purpose.

(g) *Time limits.* (1) Provide written acknowledgement of a request to amend within 10 working days of its receipt by the appropriate systems manager. There is no need to acknowledge a request if the action is completed within 10 working days and the individual is so informed.

(2) The letter of acknowledgement shall clearly identify the request and advise the individual when he or she may expect to be notified of the completed action.

(3) Only under the most exceptional circumstances shall more than 30 days be required to reach a decision on a request to amend. Document fully and explain in the Privacy Act case file (see paragraph (p) of this section) any such decision that takes more than 30 days to resolve.

(h) *Agreement to amend.* If the decision is made to grant all or part of the request for amendment, amend the record accordingly and notify the requester.

(i) *Notification of previous recipients.* (1) Notify all previous recipients of the information, as reflected in the disclosure accounting records, that an amendment has been made and the substance of the amendment. Recipients who are known to be no longer retaining the information need not be advised of the amendment. All DoD Components and federal agencies known to be retaining the record or information, even if not reflected in a disclosure record, shall be notified of the amendment. Advise the requester of these notifications.

(2) Honor all requests by the requester to notify specific federal agencies of the amendment action.

(j) *Denying amendment.* If the request for amendment is denied in whole or in part, promptly advise the individual in writing of the decision to include:

(1) The specific reason and authority for not amending;

(2) Notification that he or she may seek further independent review of the decision by the head of the Component or his or her designee;

(3) The procedures for appealing the decision citing the position and address of the official to whom the appeal shall be addressed; and

(4) Where he or she can receive assistance in filing the appeal.

(k) *DoD Component appeal procedures.* Establish procedures to ensure the prompt, complete, and independent review of each amendment denial upon appeal by the individual. These procedures must ensure that:

(1) The appeal with all supporting materials both that furnished the individual and that contained in Component records is provided to the reviewing official, and

(2) If the appeal is denied completely or in part, the individual is notified in writing by the reviewing official that:

(i) The appeal has been denied and the specific reason and authority for the denial;

(ii) The individual may file a statement of disagreement with the appropriate authority and the procedures for filing this statement;

(iii) If filed properly, the statement of disagreement shall be included in the records, furnished to all future recipients of the records, and provided to all prior recipients of the disputed records who are known to hold the record; and

(iv) The individual may seek a judicial review of the decision not to amend.

(3) If the record is amended, ensure that:

(i) The requester is notified promptly of the decision;

(ii) All prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment (see paragraph (i) of this section); and

(iii) The requester is notified as to which DoD Components and federal agencies have been told of the amendment.

(4) Process all appeals within 30 days unless the appeal authority determines that a fair review cannot be made within this time limit. If additional time is required for the appeal, notify the requester, in writing, of the delay, the reason for the delay, and when he or she may expect a final decision on the appeal. Document fully all requirements for additional time in the Privacy Case File. (See paragraph (p) of this section)

(l) *Denying amendment of OPM records held by DoD Components.* (1) The records in all systems of records controlled by the Office of Personnel Management (OPM) government-wide system notices are technically only temporarily in the custody of the Department of Defense.

(2) All requests for amendment of these records must be processed in accordance with the OPM Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735). The Component denial authority may deny a request. However, the appeal process for all such denials must include a review by the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(3) When an appeal is received from a Component's denial of amendment of the OPM controlled record, process the appeal in accordance with the OPM Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735) and notify the OPM appeal authority listed above.

(4) The individual may appeal any Component decision not to amend the OPM records directly to OPM.

(5) OPM is the final review authority for any appeals from a denial to amend the OPM records.

(m) *Statements of disagreement submitted by individuals.* (1) If the reviewing authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement setting forth his or her reasons for disagreeing with the decision not to amend.

(2) If an individual chooses to file a statement of disagreement, annotate the record to indicate that the statement has been filed (see paragraph (n) of this section).

(3) Furnish copies of the statement of disagreement to all DoD Components and federal agencies that have been provided copies of the disputed information and who may be maintaining the information.

(n) *Maintaining statements of disagreement.* (1) When possible, incorporate the statement of disagreement into the record.

(2) If the statement cannot be made a part of the record, establish procedures to ensure that it is apparent from the records that a statement of disagreement has been filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed.

(3) Automated record systems that are not programed to accept statements of disagreement shall be annotated or coded so that they clearly indicate that a statement of disagreement is on file, and clearly identify the statement with the disputed information in the system.

(4) Provide a copy of the statement of disagreement whenever the disputed information is disclosed for any purpose.

(o) *DoD Component summaries of reasons for refusing to amend.* (1) A summary of reasons for refusing to amend may be included with any record for which a statement of disagreement is filed.

(2) Include in this summary only the reasons furnished to the individual for not amending the record. Do not include comments on the statement of

disagreement. Normally, the summary and statement of disagreement are filed together.

(3) When disclosing information for which a summary has been filed, a copy of the summary may be included in the release, if the Component desires.

(p) *Privacy Case Files.* (1) Establish a separate Privacy Case File to retain the documentation received and generated during the amendment or access process.

(2) The Privacy Case File shall contain as a minimum:

(i) The request for amendment or access;

(ii) Copies of the DoD Component's reply granting or denying the request;

(iii) Any appeals from the individual;

(iv) Copies of the action regarding the appeal with supporting documentation which is not in the basic file; and

(v) Any other correspondence generated in processing the appeal, to include coordination documentation.

(3) Only the items listed in paragraphs (p)(4) and (s) of this section may be included in the system of records challenged for amendment or for which access is sought. Do *not* retain copies of unamended records in the basic record system if the request for amendment is granted.

(4) The following items relating to an amendment request may be included in the disputed record system:

(i) Copies of the amended record.

(ii) Copies of the individual's statement of disagreement (see paragraph (m) of this section).

(iii) Copies of Component summaries (see paragraph (o) of this section).

(iv) Supporting documentation submitted by the individual.

(5) The following items relating to an access request may be included in the basic records system:

(i) Copies of the request;

(ii) Copies of the Component's action granting total access.

NOTE.—A separate Privacy case file need not be created in such cases.

(iii) Copies of the Component's action denying access;

(iv) Copies of any appeals filed;

(v) Copies of the reply to the appeal.

(6) There is no need to establish a Privacy case file if the individual has not cited the Privacy Act (reference (b)), this part, or the Component implementing instruction for this part.

(7) Privacy case files shall not be furnished or disclosed to anyone for use in making any determination about the individual other than determinations made under this part.

§ 286a.33 Reproduction fees.

(a) *Assessing fees.* (1) Charge the individual only the direct cost of reproduction.

(2) Do not charge reproduction fees if copying is:

(i) The only means to make the record available to the individual (for example, a copy of the record must be made to delete classified information); or

(ii) For the convenience of the DoD Component (for example, the Component has no reading room where an individual may review the record, or reproduction is done to keep the original in the Component's file).

(3) No fees shall be charged when the record may be obtained without charge under any other regulation, directive, or statute.

(4) Do not use fees to discourage requests.

(b) *No minimum fees authorized.* Use fees only to recoup direct reproduction costs associated with granting access. Minimum fees for duplication are not authorized and there is no automatic charge for processing a request.

(c) *Prohibited fees.* Do not charge or collect fees for:

(1) Search and retrieval of records;

(2) Review of records to determine releasability;

(3) Copying records for DoD Component convenience or when the individual has not specifically requested a copy;

(4) Transportation of records and personnel; or

(5) Normal postage.

(d) *Waiver of fees.* (1) Normally, fees are waived automatically if the direct costs of a given request is less than $30. This fee waiver provision does not apply when a waiver has been granted

BEST COPY AVAILABLE

to the individual before, and later requests appear to be an extension or duplication of that original request. A DoD Component may, however, set aside this automatic fee waiver provision when on the basis of good evidence it determines that the waiver of fees is not in the public interest.

(2) Decisions to waiver or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis.

(e) *Fees for members of Congress.* Do not charge members of Congress for copying records furnished even when the records are requested under the Privacy Act on behalf of a constituent (see § 286a.41(k) of Subpart E). When replying to a constituent inquiry and the fees involved are substantial, consider suggesting to the Congressman that the constituent can obtain the information directly by writing to the appropriate offices and paying the costs. When practical, suggest to the Congressman that the record can be examined at no cost if the constituent wishes to visit the custodian of the record.

(f) *Reproduction fees computation.* Compute fees using the appropriate portions of the fee schedule in Subpart G of the DoD Freedom of Information Program (32 CFR Part 286).

Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties

§ 286a.40 Conditions of disclosure.

(a) *Disclosures to third parties.* (1) The Privacy Act only compels disclosure of records from a system of records to the individuals to whom they pertain.

(2) All requests by individual for personal information about other individuals (third parties) shall be processed under the DoD Freedom of Information Program (32 CFR Part 286), except for requests by the parents of a minor, or legal guardians of an individual, for access to the records pertaining to the minor or individual.

(b) *Disclosures among DoD Components.* For the purposes of disclosure and disclosure accounting, the Department of Defense is considered a single agency (see § 286a.41(a)).

(c) *Disclosures outside the Department of Defense.* Do not disclose personal information from a system of records outside the Department of Defense unless:

(1) The record has been requested by the individual to whom it pertains.

(2) The written consent of the individual to whom the record pertains has been obtained for release of the record to the requesting agency, activity, or individual, or

(3) The release is for one of the specific nonconsensual purposes set forth in § 286a.41 of this part.

(d) *Validation before disclosure.* Except for releases made in accordance with the Freedom of Information Act (5 U.S.C. 552), before disclosing any personal information to any recipient outside the Department of Defense other than a federal agency or the individual to whom it pertains:

(1) Ensure that the records are accurate, timely, complete, and relevant for agency purposes;

(2) Contact the individual, if reasonably available, to verify the accuracy, timeliness, completeness, and relevancy of the information, if the cannot be determined from the record; or

(3) If the information is not current and the individual is not reasonably available, advise the recipient that the information is believed accurate as of a specific date and any other known factors bearing on its accuracy and relevancy.

§ 286a.41 Nonconsensual disclosures.

(a) *Disclosures within the Department of Defense.* (1) Records pertaining to an individual may be disclosed without the consent of the individual to any DoD official who has need for the record in the performance of his or her assigned duties.

(2) Rank, position, or title alone do not authorize access to personal information about others. An official need for the information must exist before disclosure.

(b) *Disclosures under the Freedom of Information Act.* (1) All records must be disclosed if their release is required by the Freedom of Information Act (5 U.S.C 552) see also the DoD Freedom of Information Program (32 CFR Part

286). The Freedom of Information Act requires that records be made available to the public unless exempted from disclosure by one of the nine exemptions found in the Act. It follows, therefore, that if a record is not exempt from disclosure it must be disclosed.

(2) The standard for exempting most personal records, such as personnel records, medical records, and similar records, is found in Exemption Number 6 of 32 CFR 286.31. Under that exemption, release of personal information can only be denied when its release would be a "clearly unwarranted invasion of personal privacy."

(3) Release of personal information in investigatory records including personnel security investigation records is controlled by the broader standard of an "unwarranted invasion of personal privacy" found in Exemption Number 7 of 32 CFR 286.31. This broader standard applies only to investigatory records.

(4) See 32 CFR Part 286 for the standards to use in applying these exemptions.

(c) *Personal information that is normally releasable*—(1) *DoD civilian employees.* (i) Some examples of personal information regarding DoD civilian employees that normally may be released without a clearly unwarranted invasion of personal privacy include:

(A) Name.

(B) Present and past postion titles.

(C) Present and past grades.

(D) Present and past salaries.

(E) Present and past duty stations.

(F) Office or duty telephone numbers.

(ii) All disclosures of personal information regarding federal civilian employees shall be made in accordance with the Federal Personnel Manual (FPM) 5 CFR Parts 293, 294, 297 and 735.

(2) *Military members.* (i) While it is not possible to identify categorically information that must be released or withheld from military personnel records in every instance, the following items of personal information regarding military members normally may be disclosed without a clearly unwarranted invasion of their personal privacy:

(A) Full name.

(B) Rank.

(C) Date of rank.

(D) Gross salary.

(E) Past duty assignments.

(F) Present duty assignment.

(G) Future assignments that are officially established.

(H) Office of duty telephone numbers.

(I) Source of commission.

(J) Promotion sequence number.

(K) Awards and decorations.

(L) Attendance at professional military schools.

(M) Duty status at any given time.

(ii) All releases of personal information regarding military members shall be made in accordance with the standards established by 32 CFR Part 286.

(3) *Civilian employees not under the FPM.* (i) While it is not possible to identify categorically those items of personal information that must be released regarding civilian employees not subject to the Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735), such as nonappropriated fund employees, normally the following items may be released without a clearly unwarranted invasion of personal privacy:

(A) Full name.

(B) Grade or position.

(C) Date of grade.

(D) Gross salary.

(E) Present and past assignments.

(F) Future assignments, if officially established.

(G) Office or duty telephone numbers.

(ii) All releases of personal information regarding civilian personnel in this category shall be made in accordance with the standards established by 32 CFR Part 286, the DoD Freedom of Information Program.

(d) *Release of home addresses and home telephone numbers.* (1) The release of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, these may be released without prior specific consent of the individual if:

(i) The individual has indicated previously that he or she interposes no objection to their release (see paragraphs (d)(3) and (4) of this section);

(ii) The source of the information to be released is a public document such as commercial telephone directory or other public listing;

(iii) The release is required by federal statute (for example, pursuant to federally-funded state programs to locate parents who have defaulted on child support payments (42 U.S.C. 653); or

(iv) The releasing official releases the information under the provisions of the DoD Freedom of Information Act Program (32 CFR Part 286).

(2) A request for a home address or telephone number may be referred to the last known address of the individual for a direct reply by him or her to the requester. In such cases the requester shall be notified of the referral.

(3) When collecting lists of home addresses and telephone numbers, the individual may be offered the option of authorizing the information pertaining to him or her to be disseminated without further permission for specific purposes, such as locator services. In these cases, the information may be disseminated for the stated purpose without further consent. However, if the information is to be disseminated for any other purpose, a new consent is required. Normally such consent for release is in writing and signed by the individual.

(4) Before listing home addresses and home telephone numbers in DoD telephone directories, give the individuals the opportunity to refuse such a listing. Excuse the individual from paying any additional cost that may be associated with maintaining an unlisted number for government-owned telephone services if the individual requests his or her number not be listed in the directory under this part.

(5) Do not sell or rent lists of individual names and addresses unless such action is specifically authorized.

(e) *Disclosures for established routine uses.* (1) Records may be disclosed outside the Department of Defense without consent of the individual to whom they pertain for an established routine use.

(2) A routine use shall:

(i) Be compatible with and related to the purpose for which the record was compiled;

(ii) Identify the persons or organizations to whom the record may be released;

(iii) Identify specifically the uses to which the information may be put by the receiving agency; and

(iv) Have been published previously in the FEDERAL REGISTER (see paragraph (i) of § 286a.62, Subpart G).

(3) Establish a routine use for each user of the information outside the Department of Defense who need official access to the records.

(4) Routine uses may be established, discontinued, or amended without the consent of the individuals involved. However, new or changed routine uses must be published in the FEDERAL REGISTER at least 30 days before actually disclosing any records under their provisions (see Subpart G).

(5) In addition to the routine uses established by the individual system notices, common blanket routine uses for all DoD-maintained systems of records have been established (see Appendix C). These blanket routine uses are published only at the beginning of the listing of system notices for each Component in the FEDERAL REGISTER (see paragraph (a)(1) of § 286a.62, Subpart G). Unless a system notice specifically excludes a system from a given blanket routine use, all blanket routine uses apply.

(6) If the recipient has not been identified in the FEDERAL REGISTER or a use to which the recipient intends to put the record has not been published in the system notice as a routine use, the written permission of the individual is required before release or use of the record for that purpose.

(f) *Disclosures to the Bureau of the Census.* Records in DoD systems of records may be disclosed without the consent of the individuals to whom they pertain to the Bureau of the Census for purposes of planning or carrying out a census survey or related activities pursuant to the provisions of 13 U.S.C. 8.

(g) *Disclosures for statistical research and reporting.* (1) Records may be disclosed for statistical research and reporting without the consent of the individuals to whom they pertain. Before such disclosures the recipient must provide advance written assurance that:

(i) The records will be used as statistical research or reporting records;

(ii) The records will only be transferred in a form that is not individually identifiable; and

(iii) The records will not be used, in whole or in part, to make any determination about the rights, benefits, or entitlements of specific individuals.

(2) A disclosure accounting (see paragraph (a) of § 286.44) is not required when information that is not identifiable individually is released for statistical research or reporting.

(h) *Disclosures to the National Archives and Records Administration (NARA) General Services Administration.* (1) Records may be disclosed without the consent of the individual to whom they pertain to the NARA if they:

(i) Have historical or other value to warrant continued preservation; or

(ii) For evaluation by the NARA to determine if a record has such historical or other value.

(2) Records transferred to a Federal Records Center (FRC) for safekeeping and storage do not fall within this category. These remain under the control of the transferring Component, and the FRC personnel are considered agents of the Component which retains control over the records. No disclosure accounting is required for the transfer of records to the FRCs.

(i) *Disclosures for law enforcement purposes.* (1) Records may be disclosed without the consent of the individual to whom they pertain to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, provided:

(i) The civil or criminal law enforcement activity is authorized by law;

(ii) The head of the law enforcement activity or a designee has made a written request specifying the particular records desired and the law enforcement purpose (such as criminal investigations, enforcement of a civil law, or a similar purpose) for which the record is sought; and

(iii) There is no federal statute that prohibits the disclosure of the records.

(2) Normally, blanket requests for access to any and all records pertaining to an individual are not honored.

(3) When a record is released to a law enforcement activity under paragraph (i)(1) of this section, maintain a disclosure accounting. This disclosure accounting shall not be made available to the individual to whom the record pertains if the law enforcement activity requests that the disclosure not be released.

(4) The blanket routine use for Law Enforcement (Appendix C, section A.) applies to all DoD Component systems notices (see paragraph (e)(5) of this section). Only by including this routine use can a Component, on its own initiative, report indications of violations of law found in a system of records to a law enforcement activity without the consent of the individual to whom the record pertains (see paragraph (i)(1) of this section when responding to requests from law enforcement activities).

(j) *Emergency disclosures.* (1) Records may be disclosed without the consent of the individual to whom they pertain if disclosure is made under compelling circumstances affecting the health or safety of any individual. The affected individual need not be the subject of the record disclosed.

(2) When such a disclosure is made, notify the individual who is the subject of the record. Notification sent to the last known address of the individual as reflected in the records is sufficient.

(3) The specific data to be disclosed is at the discretion of releasing authority.

(4) Emergency medical information may be released by telephone.

(k) *Disclosures to Congress and the General Accounting Office.* (1) Records may be disclosed without the consent of the individual to whom they pertain to either House of the Congress or to any committee, joint committee or subcommittee of Congress if the release pertains to a matter within the jurisdiction of the committee. Records may also be disclosed to the General Accounting

Office (GAO) in the course of the activities of GAO.

(2) The blanket routine use for "Congressional Inquiries" (see Appendix C, section D.) applies to all systems; therefore, there is no need to verify that the individual has authorized the release of his or her record to a congressional member when responding to a congressional constituent inquiry.

(3) If necessary, accept constituent letters requesting a member of Congress to investigate a matter pertaining to the individual as written authorization to provide access to the records to the congressional member or his or her staff.

(4) The verbal statement by a congressional staff member is acceptable to establish that a request has been received from the person to whom the records pertain.

(5) If the constituent inquiry is being made on behalf of someone other than the individual to whom the record pertains, provide the congressional member only that information releasable under the Freedom of Information Act (5 U.S.C. 552). Advise the congressional member that the written consent of the individual to whom the record pertains is required before any additional information may be released. Do not contact individuals to obtain their consents for release to congressional members unless a congressional office specifically requests that this be done.

(6) Nothing in paragraph (k)(2) of this section prohibits a Component, when appropriate, from providing the record directly to the individual and notifying the congressional office that this has been done without providing the record to the congressional member.

(7) See paragraph (e) of § 286a.33 for the policy on assessing fees for Members of Congress.

(8) Make a disclosure accounting each time a record is disclosed to either House of Congress, to any committee, joint committee, or subcommittee of Congress, to any congressional member, or GAO.

(l) *Disclosures under court orders.* (1) Records may be disclosed without the consent of the person to whom they pertain under a court order signed by a judge of a court of competent jurisdiction. Releases may also be made under the compulsory legal process of federal or state bodies having authority to issue such process.

(2) When a record is disclosed under this provision, make reasonable efforts to notify the individual to whom the record pertains, if the legal process is a matter of public record.

(3) If the process is not a matter of public record at the time it is issued, seek to be advised when the process is made public and make reasonable efforts to notify the individual at that time.

(4) Notification sent to the last known address of the individual as reflected in the records is considered reasonable effort to notify.

(5) Make a disclosure accounting each time a record is disclosed under a court order or compulsory legal process.

(m) *Disclosures to consumer reporting agencies.* (1) Certain personal information may be disclosed to consumer reporting agencies as defined by the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 952(d)).

(2) Under the provisions of paragraph (m)(1) of this section, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim.

(iii) The agency or program under which the claim arose.

(3) The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 952(d)) specifically requires that the system notice for the system of records from which the information will be disclosed indicates that the information may be disclosed to a "consumer reporting agency."

§ 286a.42 Disclosures to commercial enterprises.

(1) *General policy.* (1) Make releases of personal information to commercial enterprises under the criteria estab-

lished by the DoD Freedom of Information Program (32 CFR Part 286).

(2) The relationship of commercial enterprises to their clients or customers and to the Department of Defense are not changed by this part.

(3) The DoD policy on personal indebtedness for military personnel is contained in 32 CFR Part 43a and for civilian employees in the Office of Personnel Management, Federal Personnel Manual (5 CFR Part 550).

(b) *Release of personal information.* (1) Any information that must be released under the Freedom of Information (5 U.S.C. 552) may be released to a commercial enterprise without the individual's consent (see paragraph (b) of § 286a.41 of this subpart).

(2) Commercial enterprises may present a signed consent statement setting forth specific conditions for release of personal information. Statements such as the following, if signed by the individual, are considered valid:

> I hereby authorize the Department of Defense to verify my Social Security Number or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) so that they may use this information in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a statement of consent as outlined in paragraph (b)(2) of this section is presented, provide the requested information if its release is not prohibited by some other regulation or statute.

(4) Blanket statements of consent that do not identify specifically the Department of Defense or any of its Components, or that do not specify exactly the type of information to be released, may be honored if it is clear that the individual in signing the consent statement intended to obtain a personal benefit (for example, a loan to buy a house) and was aware of the type information that would be sought. Care should be exercised in these situations to release only the minimum amount of personal information essential to obtain the benefit sought.

(5) Do not honor request from commercial enterprises for official evaluation of personal characteristics, such as evaluation of personal financial habits.

§ 286a.43 Disclosures to the public from health care records.

(a) *Section applicability.* This section applies to the release of information to the news media or the public concerning persons treated or hospitalized in DoD medical facilities and patients of nonfederal medical facilities for whom the cost of the care is paid by the Department of Defense.

(b) *General disclosure.* Normally, the following may be released without the patient's consent.

(1) Personal information concerning the patient. See 32 CFR Part 286, The DoD Freedom of Information Act Program and paragraph (c) of § 286a.41.

(2) Medical condition:

(i) Date of admission or disposition;

(ii) The present medical assessment of the individual's condition in the following terms if the medical doctor has volunteered the information:

(A) The individual's condition is presently (stable) (good) (fair) (serious) or (critical), and

(B) Whether the patient is conscious, semiconscious, or unconscious.

(c) *Individual consent.* (1) Detailed medical and other personal information may be released in response to inquiries from the news media and public if the patient has given his or her informed consent to such a release.

(2) If the patient is not conscious or competent, no personal information except that required by the Freedom of Information Act (5 U.S.C. 552) shall be released until there has been enough improvement in the patient to ensure he or she can give informed consent or a guardian has been appointed legally for the patient and the guardian has given consent on behalf of the patient.

(3) The consent described in paragraph (c)(1) of this section regarding patients who are minors must be given by the parent of legal guardian.

(d) *Information that may be released with individual consent.* (1) Any item

BEST COPY AVAILABLE

of personal information may be released, if the patient has given his or her informed consent to its release.

(2) Releasing medical information about patients shall be done with discretion, so as not to embarrass the patient, his or her family, or the Department of Defense, needlessly.

(e) *Disclosures to other government agencies.* This subpart does not limit the disclosures of personal medical information to other government agencies for use in determining eligibility for special assistance or other benefits.

§ 286a.41 Disclosure accounting.

(a) *Disclosure accountings.* (1) Keep an accurate record of all disclosures made from any system of records except disclosures:

(i) To DoD personnel for use in the performance of their official duties; or

(ii) Under 32 CFR Part 286, The DoD Freedom of Information Program.

(2) In all other cases a disclosure accounting is required even if the individual has consented to the disclosure of the information pertaining to him or her.

(3) Disclosure accountings:

(i) Permit individuals to determine to whom information has been disclosed;

(ii) Enable the activity to notify past recipients of disputed or corrected information (paragraph (i)(1) of § 286a.32, Subpart D); and

(iii) Provide a method of determining compliance with paragraph (c) of § 286a.40.

(b) *Contents of disclosure accountings.* As a minimum, disclosure accounting shall contain:

(1) The date of the disclosure.

(2) A description of the information released.

(3) The purpose of the disclosure.

(4) The name and address of the person or agency to whom the disclosure was made.

(c) *Methods of disclosure accounting.* Use any system of disclosure accounting that will provide readily the necessary disclosure information (see paragraph (a)(3) of this section).

(d) *Accounting for mass disclosures.* When numerous similar records are released (such as transmittal of payroll checks to a bank), identify the category of records disclosed and include the data required by paragraph (b) of this section in some form that can be used to construct an accounting disclosure record for individual records if required (see paragraph (a)(3) of this section).

(e) *Disposition of disclosure accounting records.* Retain disclosure accounting records for 5 years after the disclosure or the life of the record, whichever is longer.

(f) *Furnishing disclosure accountings to the individual.* (1) Make available to the individual to whom the record pertains all disclosure accountings except when:

(i) The disclosure has been made to a law enforcement activity under paragraph (i) of § 286a.41 and the law enforcement activity has requested that disclosure not be made; or

(ii) The system of records has been exempted from the requirement to furnish the disclosure accounting under the provisions of § 286a.50(b), Subpart F.

(2) If disclosure accountings are not maintained with the record and the individual requests access to the accounting, prepare a listing of all disclosures (see paragraph (b) of this section) and provide this to the individual upon request.

Subpart F—Exemptions

§ 286a.50 Use and establishment of exemptions.

(a) *Types of exemptions.* (1) There are two types of exemptions permitted by the Privacy Act.

(i) General exemptions that authorize the exemption of a system of records from all but certain specifically identified provisions of the Act.

(ii) Specific exemptions that allow a system of records to be exempted only from certain designated provisions of the Act.

(2) Nothing in the Act permits exemption of any system of records from all provisions of the Act (see Appendix D).

(b) *Establishing exemptions.* (1) Neither general nor specific exemptions are established automatically for any system of records. The head of the DoD Component maintaining the system of records must make a determination whether the system is one for which an exemption properly may be claimed and then propose and establish an exemption rule for the system. No system of records within the Department of Defense shall be considered exempted until the head of the Component has approved the exemption and an exemption rule has been published as a final rule in the FEDERAL REGISTER (see § 286a.60(e), Subpart G).

(2) Only the head of the DoD Component or an authorized designee may claim an exemption for a system of records.

(3) A system of records is considered exempt only from those provisions of the Privacy Act (5 U.S.C 552a) which are identified specifically in the Component exemption rule for the system and which are authorized by the Privacy Act.

(4) To establish an exemption rule, see § 286a.61 of Subpart G.

(c) *Blanket exemption for classified material.* (1) Include in the Component rules a blanket exemption under 5 U.S.C. 552a(k)(1) of the Privacy Act from the access provisions (5 U.S.C. 552a(d)) and the notification of access procedures (5 U.S.C. 522a(e)(4)(H)) of the Act for all classified material in any system of records maintained.

(2) Do not claim specifically an exemption under section 552a(k)(1) of the Privacy Act for any system of records. The blanket exemption affords protection to all classified material in all systems of records maintained.

(d) *Provisions from which exemptions may be claimed.* (1) The head of a DoD Component may claim an exemption from any provision of the Act from which an exemption is allowed (see Appendix D).

(2) Notify the Defense Privacy Office ODASD(A) before claiming an exemption for any system of records from the following:

(i) The exemption rule publication requirement (5 U.S.C. 552a(j)) of the Privacy Act.

(ii) The requirement to report new systems of records (5 U.S.C. 552a(o)); or

(iii) The annual report requirement (5 U.S.C. 552a(p)).

(e) *Use of exemptions.* (1) Use exemptions only for the specific purposes set forth in the exemption rules (see paragraph (b) of § 286a.61 Subpart G).

(2) Use exemptions only when they are in the best interest of the government and limit them to the specific portions of the records requiring protection.

(3) Do not use an exemption to deny an individual access to any record to which he or she would have access under the Freedom of Information Act (5 U.S.C. 552).

(f) *Exempt records in nonexempt systems.* (1) Exempt records temporarily in the hands of another Component are considered the property of the originating Component and access to these records is controlled by the system notices and rules of the originating Component.

(2) Records that are actually incorporated into a system of records may be exempted only to the extent the system of records into which they are incorporated has been granted an exemption, regardless of their original status or the system of records for which they were created.

(3) If a record is accidentally misfiled into a system of records, the system notice and rules for the system in which it should actually be filed will govern.

§ 286a.51 General exemptions.

(a) *Use of the general exemptions.* (1) No DoD Component is authorized to claim the exemption for records maintained by the Central Intelligence Agency established by 5 U.S.C. 552a(j)(1) of the Privacy Act.

(2) The general exemption established by 5 U.S.C. 552a(j)(2) of the Privacy Act may be claimed to protect investigative records created and maintained by law-enforcement activities of a DoD Component.

(3) To qualify for the (j)(2) exemption, the system of records must be maintained by an element that per-

forms as its principal function enforcement of the criminal law, such as U.S. Army Criminal Investigation Command (CIDC), Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and military police activities. Law enforcement includes police efforts to detect, prevent, control, or reduce crime, to apprehend or identify criminals; and the activities of correction, probation, pardon, or parole authorities.

(4) Information that may be protected under the (j)(2) exemption include:

(i) Records compiled for the purpose of identifying criminal offenders and alleged offenders consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, parole, and probation status (so-called criminal history records);

(ii) Reports and other records compiled during criminal investigations, to include supporting documentation.

(iii) Other records compiled at any stage of the criminal law enforcement process from arrest or indictment through the final release from parole supervision, such as presentence and parole reports.

(5) The (j)(2) exemption does not apply to:

(i) Investigative records prepared or maintained by activities without primary law-enforcement missions. It may not be claimed by any activity that does not have law enforcement as its principal function.

(ii) Investigative records compiled by any activity concerning employee suitability, eligibility, qualification, or for individual access to classified material regardless of the principal mission of the compiling DoD Component.

(6) The (j)(2) exemption claimed by the law-enforcement activity will not protect investigative records that are incorporated into the record system of a nonlaw enforcement activity or into nonexempt systems of records (see paragraph (t)(2) of § 286a.50). Therefore, all system managers are cautioned to comply with the various regulations prohibiting or limiting the incorporation of investigatory records into system of records other than those maintained by law-enforcement activities.

(b) *Access to records for which a (j)(2) exemption is claimed.* Access to investigative records in the hands of a law-enforcement activity or temporarily in the hands of a military commander or other criminal adjudicative activity shall be processed under 32 CFR Part 286, The DoD Freedom of Information Act Program, provided that the system of records from which the file originated is a law enforcement record system that has been exempted from the access provisions of this part (see paragraph (h) of § 286a.30, Subpart D).

§ 286a.52 Specific exemptions.

(a) *Use of the specific exemptions.* The specific exemptions permit certain categories of records to be exempted from certain specific provisions of the Privacy Act (see Appendix D). To establish a specific exemption, the records must meet the following criteria (parenthetical references are to the appropriate subsection of the Privacy Act (5 U.S.C. 552a(k)):

(1) *The (k)(1).* Information specifically authorized to be classified under the DoD Information Security Program Regulation, 32 CFR Part 159. (see also paragraph (c) of this section).

(2) *The (k)(2).* Investigatory information compiled for law-enforcement purposes by nonlaw enforcement activities and which is not within the scope of § 286a.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(3) *The (k)(3).* Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506.

(4) *The* (*k*)(*4*). Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(5) *The* (*k*)(*5*). Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(6) *The* (*k*)(*6*). Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *The* (*k*)(*7*). Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(b) *Promises of confidentiality.* (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (a)(2), (5) and (7) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, may also be protected from disclosure.

(2) Ensure that promises of confidentiality are used on a limited basis in day-to-day operations. Establish appropriate procedures and identify fully those categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought.

(c) *Access to records for which specific exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

Subpart G—Publication Requirements

§ 286a.60 Federal Register publication.

(a) *What must be published in the* FEDERAL REGISTER. (1) Three types of documents relating to the Privacy Program must be published in the FEDERAL REGISTER:

(i) DoD Component Privacy Program rules;

(ii) Component exemption rules; and

(iii) System notices.

(2) See DoD 5025.1-M, "Directives Systems Procedures," and DoD Directive 5400.9, (32 CFR Part 296) "Publication of Proposed and Adopted Regulations Affecting the Public" for information pertaining to the preparation of documents for publication in the FEDERAL REGISTER.

(b) *The effect of publication in the* FEDERAL REGISTER. Publication of a document in the FEDERAL REGISTER constitutes official public notice of the existence and content of the document.

(c) *DoD Component rules.* (1) Component Privacy Program procedures and Component exemption rules are subject to the rulemaking procedures prescribed in 32 CFR Part 296.

(2) System notices are not subject to formal rulemaking and are published in the FEDERAL REGISTER as "Notices," not rules.

(3) Privacy procedural and exemption rules are incorporated automatically into the Code of Federal Regulations (CFR). System notices are not published in the CFR.

(d) *Submission of rules for publication.* (1) Submit to the Defense Privacy Office, ODASD(A), all proposed rules implementing this part in proper format (see Appendices E, F and G) for publication in the FEDERAL REGISTER.

(2) This part has been published as a final rule in the FEDERAL REGISTER (32 CFR Part 286a). Therefore, incorporate it into your Component rules by reference rather than by republication.

(3) DoD Component rules that simply implement this part need only be published as final rules in the FEDERAL REGISTER (see DoD 5025.1-M, "Directives System Procedures," and DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," (32 CFR Part 296).

(4) Amendments to Component rules are submitted like the basic rules.

(5) The Defense Privacy Office ODASD(A) submits the rules and amendments thereto to the FEDERAL REGISTER for publication.

(e) *Submission of exemption rules for publication.* (1) No system of records within the Department of Defense shall be considered exempt from any provision of this part until the exemption and the exemption rule for the system has been published as a final rule in the FEDERAL REGISTER (see paragraph (c) of this section).

(2) Submit exemption rules in proper format to the Defense Privacy Office ODASD(A). After review, the Defense Privacy Office will submit the rules to the FEDERAL REGISTER for publication.

(3) Exemption rules require publication both as proposed rules and final rules (see DoD Directive 5400.9, 32 CFR Part 296).

(4) Section 286a.61 of this subpart discusses the content of an exemption rule.

(5) Submit amendments to exemption rules in the same manner used for establishing these rules.

(f) *Submission of system notices for publication.* (1) While system notices are not subject to formal rulemaking procedures, advance public notice must be given before a Component may begin to collect personal information or use a new system of records. The notice procedures require that:

(i) The system notice describes the contents of the record system and the routine uses for which the information in the system may be released.

(ii) The public be given 30 days to comment on any proposed routine uses before implementation; and

(iii) The notice contain the data on which the system will become effective.

(2) Submit system notices to the Defense Privacy Office in the Federal Register format (see Appendix E). The Defense Privacy Office transmits the notices to the FEDERAL REGISTER for publication.

(3) Section 286a.62 of this subpart discusses the specific elements required in a system notice.

§ 286a.61 Exemption rules.

(a) *General procedures.* Paragraph (b)(1) of § 286a.50, Subpart F, provides the general guidance for establishing exemptions for systems of records.

(b) *Contents of exemption rules.* (1) Each exemption rule submitted for publication must contain the following:

(i) The record system identification and title of the system for which the exemption is claimed (see § 286a.62 of this subpart);

(ii) The specific subsection of the Privacy Act under which exemptions for the system are claimed (for example, 5 U.S.C. 552a(j)(2), 5 U.S.C. 552a(k)(3); or 5 U.S.C. 552a(k)(7);

(iii) The specific provisions and subsections of the Privacy Act from which the system is to be exempted (for example, 5 U.S.C. 552a(c)(3), or 5 U.S.C. 552a(d)(1)-(5)) (see Appendix D); and

(iv) The specific reasons why an exemption is being claimed from each subsection of the Act identified.

(2) Do not claim an exemption for classified material for individual systems of records, since the blanket exemption applies (see paragraph (c) of § 286a.50 of Subpart F).

§ 286a.62 System notices.

(a) *Contents of the system notices.* (1) The following data captions are included in each system notice:

(i) System identification (see paragraph (b) of this section).

(ii) System name (see paragraph (c) of this section).

(iii) System location (see paragraph (d) of this section).

(iv) Categories of individuals covered by the system (see paragraph (e) of this section).

(v) Categories of records in the system (see paragraph (f) of this section).

(vi) Authority for maintenance of the system (see paragraph (g) of this section).

(vii) Purpose(s) (see paragraph (h) of this section).

(viii) Routine uses of records maintained in the system, including categories of users, uses, and purposes of such uses (see paragraph (i) of this section).

(ix) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system (see paragraph (j) of this section).

(x) Systems manager(s) and address (see paragraph (k) of this section).

(xi) Notification procedure (see paragraph (l) of this section).

(xii) Record access procedures (see paragraph (m) of this section).

(xiii) Contesting records procedures (see paragraph (n) of this section.)

(xiv) Record source categories (see paragraph (o) of this section).

(xv) Systems exempted from certain provision of the Act (see paragraph (p) of this section).

(2) The captions listed in paragraph (a)(1) of this section have been mandated by the Office of Federal Register and must be used exactly as presented.

(3) A sample system notice is shown in Appendix E.

(b) *System identification.* The system identifier must appear on all system notices and is limited to 21 positions, including Component code, file number and symbols, punctuation, and spacing.

(c) *System name.* (1) The name of the system should reasonably identify the general purpose of the system and, if possible, the general categories of individuals involved.

(2) Use acronyms only parenthetically following the title or any portion thereof, such as, "Joint Uniform Military Pay System (JUMPS)." Do not use acronyms that are not commonly known unless they are preceded by an explanation.

(3) The system name may not exceed 55 character positions including punctuation and spacing.

(d) *System location.* (1) For systems maintained in a single location provide the exact office name, organizational identity, and address or routing symbol.

(2) For geographically or organizationally decentralized systems, specify each level of organization or element that maintains a segment of the system.

(3) For automated data systems with a central computer facility and input/output terminals at several geographically separated locations, list each location by category.

(4) When multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are contained in an address directory published as an appendix to the Component system notices in the FEDERAL REGISTER. Information concerning format requirements for preparation of an address directory may be obtained from the project officer, Air Force 1st Information Systems Group (AF/1ISG/GNR), Washington, DC 20330-6345.

(5) If no address directory is used or the addresses in the directory are incomplete, the address of each location where a segment of the record system is maintained must appear under the "System Location" caption.

(6) Classified addresses are not listed, but the fact that they are classified is indicated.

(7) Use the standard U.S. Postal Service two letter state abbreviation symbols and zip codes for all domestic addresses.

(e) *Categories of individuals covered by the system.* (1) Set forth the specific categories of individuals to whom records in the system pertain in clear, easily understood, nontechnical terms.

(2) Avoid the use of broad over-general descriptions, such as "all Army personnel" or "all military personnel" unless this actually reflects the category of individuals involved.

(f) *Categories of records in the system.* (1) Describe in clear, nontechnical terms the types of records maintained in the system.

(2) Only documents actually retained in the system of records shall be described, not source documents that are used only to collect data and then destroyed.

(g) *Authority for maintenance of the system.* (1) Cite the specific provision

BEST COPY AVAILABLE

of the federal statute or Executive Order that authorizes the maintenance of the system.

(2) Include with citations for statutes the popular names, when appropriate (for example, Title 51, U.S. Code, section 2103, "Tea-Tasters Licensing Act"), and for Executive Orders, the official title (for example, Executive Order No. 9397, "Numbering System for Federal Accounts Relating to Individual Persons").

(3) Cite the statute or Executive Order establishing the Component for administrative housekeeping records.

(4) If the Component is chartered by a DoD Directive, cite that Directive as well as the Secretary of Defense authority to issue the Directive. For example, "Pursuant to the authority contained in the National Security Act of 1947, as amended (10 U.S.C. 133d), the Secretary of Defense has issued DoD Directive 5105.21, the charter of the Defense Intelligence Agency (DIA) as a separate Agency of the Department of Defense under his control. Therein, the Director, DIA, is charged with the responsibility of maintaining all necessary and appropriate records."

(h) *Purpose or purposes.* (1) List the specific purposes for maintaining the system of records by the Component.

(2) Include the uses made of the information within the Component and the Department of Defense (so-called "internal routine uses").

(i) *Routine uses.* (1) The blanket routine uses (Appendix C) that appear at the beginning of each Component compilation apply to all systems notices unless the individual system notice specifically states that one or more of them do not apply to the system. List the blanket routine uses at the beginning of the Component listing of system notices (see paragraph (e)(5) of § 286a.41 of Subpart E).

(2) For all other routine uses, when practical, list the specific activity to which the record may be released, to include any routine automated system interface (for example, "to the Department of Justice, Civil Rights Compliance Division," "to the Veterans Administration, Office of Disability Benefits," or "to state and local health agencies").

(3) For each routine user identified, include a statement as to the purpose or purposes for which the record is to be released to that activity (see § 286a.41(e) of Subpart E). The routine uses should be compatible with the purpose for which the record was collected or obtained (see § 286a.3(p), Subpart A).

(4) Do not use general statements, such as, "to other federal agencies as required" or "to any other appropriate federal agency."

(j) *Policies and practices for storing, retiring, accessing, retaining, and disposing of records.* This caption is subdivided into four parts:

(1) *Storage.* Indicate the medium in which the records are maintained. (For example, a system may be "automated", maintained on magnetic tapes or disks, "manual", maintained in paper files, or "hybrid", maintained in a combination of paper and automated form.) Storage does not refer to the container or facility in which the records are kept.

(2) *Retrievability.* Specify how the records are retrieved (for example, name and SSN, name, SSN) and indicate whether a manual or computerized index is required to retrieve individual records.

(3) *Safeguards.* List the categories of Component personnel having immediate access and those responsible for safeguarding the records from unauthorized access. Generally identify the system safeguards (such as storage in safes, vaults, locked cabinets or rooms, use of guards, visitor registers, personnel screening, or computer "fail-safe" systems software). Do not describe safeguards in such detail so as to compromise system security.

(4) *Retention and disposal.* Indicate how long the record is retained. When appropriate, also state the length of time the records are maintained by the Component, when they are transferred to a Federal Records Center, length of retention at the Record Center and when they are transferred to the National Archivist or are destroyed. A reference to a Component regulation without further detailed information is insufficient.

(k) *System manager(s) and address.* (1) List the title and address of the official responsible for the management of the system.

(2) If the title of the specific official is unknown, such as for a local system, specify the local commander or office head as the systems manager.

(3) For geographically separated or organizationally decentralized activities for which individuals may deal directly with officials at each location in exercising their rights, list the position or duty title of each category of officials responsible for the system or a segment thereof.

(4) Do not include business or duty addresses if they are listed in the Component address directory.

(l) *Notification procedures.* (1) If the record system has been exempted from subsection (e)(4)(G) of the Privacy Act (5 U.S.C. 552a) (see § 286a.50)(d), so indicate.

(2) For all nonexempt systems, describe how an individual may determine if there are records pertaining to him or her in the system. The procedural rules may be cited, but include a brief procedural description of the needed data. Provide sufficient information in the notice to allow an individual to exercise his or her rights without referral to the formal rules.

(3) As a minimum, the caption shall include:

(i) The official title (normally the system manager) and official address to which the request is to be directed;

(ii) The specific information required to determine if there is a record of the individual in the system.

(iii) Identification of the offices through which the individual may obtain access; and

(iv) A description of any proof of identity required (see § 286a.30(c)(1)).

(4) When appropriate, the individual may be referred to a Component official who shall provide this data to him or her.

(m) *Record access procedures.* (1) If the record system has been exempted from subsection (e)(4)(H) of the Privacy Act (5 U.S.C. 552a) (see § 286a.50(d)), so indicate.

(2) For all nonexempt records systems, describe the procedures under which individuals may obtain access to the records pertaining to them in the system.

(3) When appropriate, the individual may be referred to the system manager or Component official to obtain access procedures.

(4) Do not repeat the addresses listed in the Component address directory but refer the individual to that directory.

(n) *Contesting record procedures.* (1) If the record system has been exempted from subsection (e)(4)(H) of the Privacy Act (5 U.S.C. 552a) (see § 286a.50(d)), so indicate.

(2) For all nonexempt systems of records, state briefly how an individual may contest the content of a record pertaining to him or her in the system.

(3) The detailed procedures for contesting record accuracy, refusal of access or amendment, or initial review and appeal need not be included if they are readily available elsewhere and can be referred to by the public. (For example, "The Defense Mapping Agency rules for contesting contents and for appealing initial determinations are contained in DMA Instruction 5400.11 (32 CFR Part 295c).")

(4) The individual may also be referred to the system manager to determine these procedures.

(o) *Record source categories.* (1) If the record system has been exempted from subsection (e)(4)(I) of the Privacy Act (5 U.S.C. 552a) (see § 286a.50(d), Subpart F), so indicate.

(2) For all nonexempt systems of records, list the sources of the information in the system.

(3) Specific individuals or institutions need not be identified by name, particularly if these sources have been granted confidentiality (see paragraph (b) of § 286a.52, Subpart F).

(p) *System exempted from certain provisions of the Act.* (1) If no exemption has been claimed for the system, indicate "None."

(2) If there is an exemption claimed indicate specifically under which subsection of the Privacy Act (5 U.S.C. 552a) it is claimed.

(3) Cite the regulation and CFR section containing the exemption rule for the system. (For example, "Parts of this record system may be exempt under Title 5, United States Code, Sections 552a(k)(2) and (5), as applicable.

See exemption rules contained in Army Regulation 340-21 (32 CFR Part 505).")

(q) *Maintaining the master DoD system notice registry.* (1) The Defense Privacy Office, ODASD(A) maintains a master registry of all DoD record systems notices.

(2) Coordinate with the Defense Privacy Office, ODASD(A) to ensure that all new systems are added to the master registry and all amendments and alterations are incorporated into the master registry.

§ 286a.63 New and altered record systems.

(a) *Criteria for a new record system.* (1) A new system of records is one for which there has been no system notice published in the FEDERAL REGISTER.

(2) If a notice for a system of records has been canceled or deleted before reinstating or reusing the system, a new system notice must be published in the FEDERAL REGISTER.

(b) *Criteria for an altered record system.* A system is considered altered whenever one of the following actions occurs or is proposed:

(1) A significant increase or change in the number or type of individuals about whom records are maintained.

(i) Only changes that alter significantly the character and purpose of the record system are considered alterations.

(ii) Increases in numbers of individuals due to normal growth are not considered alterations unless they truly alter the character and purpose of the system;

(iii) Increases that change significantly the scope of population covered (for example, expansion of a system of records covering a single command's enlisted personnel to include all of the Component's enlisted personnel would be considered an alteration).

(iv) A reduction in the number of individuals covered is not an alteration, but only an amendment (see paragraph (a) of § 286a.64 of this subpart).

(v) All changes that add new categories of individuals to system coverage require a change to the "Categories of individuals covered by the system" caption of the notice (§ 286a.62(e)) and may require changes to the "Purpose(s)" caption (§ 286a 62(h)).

(2) An expansion in the types or categories of information maintained.

(i) The addition of any new category of records not described under the "Categories of Records in System" caption is considered an alteration.

(ii) Adding a new data element which is clearly within the scope of the categories of records described in the existing notice is an amendment (see § 286a.64(a) of this subpart).

(iii) All changes under this criterion require a change to the "Categories of Records in System" caption of the notice (see § 286a.62(f) of this subpart).

(3) An alteration in the manner in which the records are organized or the manner in which the records are indexed and retrieved.

(i) The change must alter the nature of use or scope of the records involved (for example, combining records systems in a reorganization).

(ii) Any change under this criteria requires a change in the "Retrievability" caption of the system notice (see § 286a.62(j)(2) of this subpart).

(iii) If the records are no longer retrieved by name or personal identifier cancel the system notice (see § 286a.10(a) of Subpart B).

(4) A change in the purpose for which the information in the system is used.

(i) The new purpose must not be compatible with the existing purposes for which the system is maintained or a use that would not reasonably be expected to be an alteration.

(ii) If the use is compatible and reasonably expected, there is no change in purpose and no alteration occurs.

(iii) Any change under this criterion requires a change in the "Purpose(s)" caption (see § 286a.62(h) of this subpart) and may require a change in the "Authority for maintenance of the system" caption (see § 286a.62(g) of this subpart).

(5) Changes that alter the computer environment (such as changes to equipment configuration, software, or procedures) so as to create the potential for greater or easier access.

(i) Increasing the number of offices with direct access is an alteration.

(ii) Software releases, such as operating systems and system utilities that provide for easier access are considered alterations.

(iii) The addition of an on-line capability to a previously batch-oriented system is an alteration.

(iv) The addition of peripheral devices such as tape devices, disk devices, card readers, printers, and similar devices to an existing ADP system constitute an amendment if system security is preserved (see paragraph (a) of § 286a.64 of this subpart).

(v) Changes to existing equipment configuration with on-line capability need not be considered alterations to the system if:

(A) The change does not alter the present security posture; or

(B) The addition of terminals does not extend the capacity of the current operating system and existing security is preserved;

(vi) The connecting of two or more formerly independent automated systems or networks together creating a potential for greater access is an alteration.

(vii) Any change under this caption requires a change to the "Storage" caption element of the systems notice (see § 286a.62(j)(1) of this subpart).

(c) *Reports of new and altered systems.* (1) Submit a report of a new or altered system to the Defense Privacy Office before collecting information for or using a new system or altering an existing system (see Appendix F and paragraph (d) of this section).

(2) The Defense Privacy Office, ODASD(A) coordinates all reports of new and altered systems with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense.

(3) The Defense Privacy Office prepares for the DASD(A)'s approval and signature the transmittal letters sent to OMB and Congress (see paragraph (e) of this section).

(d) *Time restrictions on the operation of a new or altered system.* (1) All time periods begin from the date the DASD(A) signs the transmittal letters (see paragraph (c)(3) of this section). The specific time limits are:

(i) 60 days must elapse before data collection forms or formal instructions pertaining to the system may be issued.

(ii) 60 days must elapse before the system may become operational; (that is, collecting, maintaining, using, or disseminating records from the system) (see also § 286a.60(f) of this subpart).

(iii) 60 days must elapse before any public issuance of a Request for Proposal or Invitation to Bid for a new ADP or telecommunication system.

NOTE: Requests for delegation of procurement authority may be submitted to the General Services Administration during the 60 days' waiting period, but these shall include language that the Privacy Act reporting criteria have been reviewed and that a system report is required for such procurement.

(4) Normally 30 days must elapse before publication in the FEDERAL REGISTER of the notice of a new or altered system (see § 286a.60(f) of this subpart) and the preamble to the FEDERAL REGISTER notice must reflect the date the transmittal letters to OMB and Congress were signed by DASD(A).

(2) Do not operate a system of records until the waiting periods have expired (see § 286a.103 of Subpart K).

(e) *Outside review of new and altered systems reports.* If no objections are received within 30 days of a submission to the President of the Senate, Speaker of the House of Representatives, and the Director, OMB, of a new or altered system report it is presumed that the new or altered systems have been approved as submitted.

(f) *Exemptions for new systems.* See § 286a.60(e) of this subpart for the procedures to follow in submitting exemption rules for a new system of records.

(g) *Waiver of time restrictions.* (1) The OMB may authorize a federal agency to begin operation of a system of records before the expiration of time limits set forth in § 286a.63(d) of this subpart.

(2) When seeking such a waiver, include in the letter of transmittal to the Defense Privacy Office, ODASD(A) an explanation why a delay of 60 days in establishing the system of records would not be in the

public interest. The transmittal must include:

(i) How the public interest will be affected adversely if the established time limits are followed; and

(ii) Why earlier notice was not provided.

(3) When appropriate, the Defense Privacy Office, ODASD(A) shall contact OMB and attempt to obtain the waiver.

(i) If a waiver is granted, the Defense Privacy Office, ODASD(A) shall notify the subcommittee and submit the new or altered system notice along with any applicable procedural or exemption rules for publication in the FEDERAL REGISTER.

(ii) If the waiver is disapproved, the Defense Privacy Office, ODASD(A) shall process the system the same as any other new or altered system and notify the subcommittee of the OMB decision.

(4) Under no circumstances shall the routine uses for new or altered system be implemented before 30 days have elapsed after publication of the system notice containing the routine uses in the FEDERAL REGISTER. This period cannot be waived.

§ 286a.64 Amendment and deletion of Systems Notices.

(a) *Criteria for an amended system notice.* (1) Certain minor changes to published systems notices are considered amendments and not alterations (see § 286a.63(b) of this subpart).

(2) Amendments do not require a report of an altered system (see § 286a.63(c) of this subpart), but must be published in the FEDERAL REGISTER.

(b) *System notices for amended systems.* When submitting an amendment for a system notice for publication in the FEDERAL REGISTER include:

(1) The system identification and name (see paragraph (b) and (c) of § 286a.62 of this subpart).

(2) A description of the nature and specific changes proposed.

(3) The full text of the system notice is not required if the master registry contains a current system notice for the system (see § 286a.62(q) of this subpart).

(c) *Deletion of system notices.* (1) Whenever a system is discontinued, combined into another system, or determined no longer to be subject to this part, a deletion notice is required.

(2) The notice of deletion shall include:

(i) The system identification and name.

(ii) The reason for the deletion.

(3) When the system is eliminated through combination or merger, identify the successor system or systems in the deletion notice.

(d) *Submission of amendments and deletions for publication.* (1) Submit amendments and deletions to the Defense Privacy Office, ODASD(A) for transmittal to the FEDERAL REGISTER for publication.

(2) Include in the submission at least one original (not a reproduced copy) in proper FEDERAL REGISTER format (see Appendix G).

(3) Multiple deletions and amendments may be combined into a single submission.

Subpart H—Training Requirements

§ 286a.70 Statutory training requirements.

The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires each agency to establish rules of conduct for all persons involved in the design, development, operation, and maintenance of any system of record and to train these persons with respect to these rules.

§ 286a.71 OMB training guidelines.

The OMB guidelines require all agencies additionally to:

(a) Instruct their personnel in their rules of conduct and other rules and procedures adopted in implementing the Act, and inform their personnel of the penalties for noncompliance.

(b) Incorporate training on the special requirements of the Act into both formal and informal (on-the-job) training programs.

§ 286a.72 DoD training programs.

(a) To meet these training requirements, establish three general levels of training for those persons who are involved in any way with the design, development, operation, or maintenance of any system of records. These are:

BEST COPY AVAILABLE

(1) *Orientation.* Training that provides basic understanding of this Regulation as it applies to the individual's job performance. This training shall be provided to personnel, as appropriate, and should be a prerequisite to all other levels of training.

(2) *Specialized training.* Training that provides information as to the application of specific provisions of this part to specialized areas of job performance. Personnel of particular concern include, but are not limited to personnel specialists, finance officers, special investigators, paperwork managers, and other specialists (reports, forms, records, and related functions), computer systems development personnel, computer systems operations personnel, statisticians dealing with personal data and program evaluations, and anyone responsible for implementing or carrying out functions under this part.

(3) *Management.* Training designed to identify for responsible managers (such as, senior system managers, denial authorities, decision-makers, and the managers of the functions described in § 286a.70 of this subpart) considerations that they shall take into account when making management decisions regarding the Defense Privacy Program.

(b) Include Privacy Act training in courses of training when appropriate. Stress individual responsibilities and advise individuals of their rights and responsibilities under this part.

§ 286a.73 Training methodology and procedures.

(a) Each DoD Component is responsible for the development of training procedures and methodology.

(b) The Defense Privacy Office, ODASD(A) will assist the Components in developing these training programs and may develop Privacy training programs for use by all DoD Components.

(c) All training programs shall be coordinated with the Defense Privacy Office, ODASD(A) to avoid duplication and to ensure maximum effectiveness.

§ 286a.74 Funding for training.

Each DoD Component shall fund its own Privacy training program.

Subpart I—Reports

§ 286a.80 Requirements for reports.

The Defense Privacy Office, ODASD(A) shall establish requirements for DoD Privacy Reports and DoD Components may be required to provide data.

§ 286a.81 Suspense for submission of reports.

The suspenses for submission of all reports shall be established by the Defense Privacy Office, ODASD(A).

§ 286a.82 Reports control symbol.

Any report established by this subpart in support of the Defense Privacy Program shall be assigned Report Control Symbol DD-COMP(A)1379. Special one-time reporting requirements shall be licensed separately in accordance with DoD Directive 5000.19 "Policies for the Management and Control of Information Requirements" and DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program."

Subpart J—Inspections

§ 286a.90 Privacy Act inspections.

During internal inspections, Component inspectors shall be alert for compliance with this part and for managerial, administrative, and operational problems associated with the implementation of the Defense Privacy Program.

§ 286a.91 Inspection reporting.

(a) Document the findings of the inspectors in official reports that are furnished the responsible Component officials. These reports, when appropriate, shall reflect overall assets of the Component Privacy Program inspected, or portion thereof, identify deficiencies, irregularities, and significant problems. Also document remedial actions taken to correct problems identified.

(b) Retain inspections reports and later follow-up reports in accordance with established records disposition standards. These reports shall be made available to the Privacy Program officials concerned upon request.

Subpart K—Privacy Act Enforcement Actions

§ 286a.100 Administrative remedies.

Any individual who feels he or she has a legitimate complaint or grievance against the Department of Defense or any DoD employee concerning any right granted by this part shall be permitted to seek relief through appropriate administrative channels.

§ 286a.101 Civil actions.

An individual may file a civil suit against a DoD Component or its employees if the individual feels certain provisions of the Act have been violated (see 5 U.S.C. 552a(g), of the Privacy Act.

§ 286a.102 Civil remedies.

In addition to specific remedial actions, subsection (g) of the Privacy Act (5 U.S.C. 552a) provides for the payment of damages, court cost, and attorney fees in some cases.

§ 286a.103 Criminal penalties.

(a) The Act also provides for criminal penalties (see 5 U.S.C. 552a(i). Any official or employee may be found guilty of a misdemeanor and fined not more than $5,000 if he or she willfully:

(1) Discloses personal information to anyone not entitled to receive the information (see Subpart E); or

(2) Maintains a system of records without publishing the required public notice in the FEDERAL REGISTER (see Subpart G).

(b) A person who requests or obtains access to any record concerning another individual under false pretenses may be found guilty of misdemeanor and fined up to $5,000.

§ 286a.104 Litigation status sheet.

Whenever a complaint citing the Privacy Act is filed in a U.S. District Court against the Department of Defense, a DoD Component, or any DoD employee, the responsible system manager shall notify promptly the Defense Privacy Office, ODASD(A). The litigation status sheet at Appendix H provides a standard format for this notification. The initial litigation status sheet forwarded shall, as a minimum, provide the information required by items 1 through 6. A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment and opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

Subpart L—Matching Program Procedures

§ 286a.110 OMB Matching guidelines.

The OMB has issued special guidelines to be followed in programs that match the personal records in the computerized data bases of two or more federal agencies by computer (see Appendix I). These guidelines are intended to strike a balance between the interest of the government in maintaining the integrity of federal programs and the need to protect individual privacy expectations. They do not authorize matching programs as such and each matching program must be justified individually in accordance with the OMB guidelines.

§ 286a.111 Requesting matching programs.

(a) Forward all requests for matching programs to include necessary routine use amendments (see paragraph (i) of § 286a.62 of Subpart G) and analysis and proposed matching program reports (see subsection E.6. of Appendix I) to the Defense Privacy Office, ODASD(A).

(b) The Defense Privacy Office shall review each request and supporting material and forward the report and system notice amendments to the FEDERAL REGISTER, OMB, and Congress, as appropriate.

(c) Changes to existing matching programs shall be processed in the same manner as a new matching program report.

§ 286a.112 Time limits for submitting matching reports.

(a) No time limits are set by the OMB guidelines. However, in order to establish a new routine use for a matching program, the amended system notice must have been published in the FEDERAL REGISTER at least 30 days before implementation (see § 286a.60(f) of Subpart G).

(b) Submit the documentation required by § 286a.111(a) of this subpart to the Defense Privacy Office at least 45 days before the proposed initiation date of the matching program.

(c) The Defense Privacy Office may grant waivers to the 45 days' deadline for good cause shown. Requests for waivers shall be in writing and fully justified.

§ 286a.113 Matching programs among DoD Components.

(a) For the purpose of the OMB guidelines, the Department of Defense and all DoD Components are considered a single agency.

(b) Before initiating a matching program using only the records of two or more DoD Components, notify the Defense Privacy Office that the match is to occur. The Defense Privacy Office may request further information from the Component proposing the match.

(c) There is no need to notify the Defense Privacy Office of computer matches using only the records of a single Component.

§ 286a.114 Annual review of systems of records.

The system manager shall review annually each system of records to determine if records from the system are being used in matching programs and whether the OMB Guidelines have been complied with.

APPENDIX A—SPECIAL CONSIDERATIONS FOR SAFEGUARDING PERSONAL INFORMATION IN ADP SYSTEMS

(See paragraph (b) of § 286a.13, Subpart B)

A. General

1. The Automated Data Processing (ADP) environment subjects personal information to special hazards as to unauthorized compromise alteration, dissemination, and use. Therefore, special considerations must be given to safeguarding personal information in ADP systems.

2. Personal information must also be protected while it is being processed or accessed in computer environments outside the data processing installation (such as, remote job entry stations, terminal stations, minicomputers, microprocessors, and similar activities).

3. ADP facilities authorized to process classified material have adequate procedures and security for the purposes of this Regulation. However, all unclassified information subject to this Regulation must be processed following the procedures used to process and access information designated "For Official Use Only" (see "DoD Freedom of Information Act Program" (32 CFR Part 286)).

B. Risk Management and Safeguarding Standards

1. Establish administrative, technical, and physical safeguards that are adequate to protect the information against unauthorized disclosure, access, or misuse (see Transmittal Memorandum No. 1 to OMB Circular A-71—Security of Federal Automated Information Systems).

2. Technical and physical safeguards alone will not protect against unintentional compromise due to errors, omissions, or poor procedures. Proper administrative controls generally provide cheaper and surer safeguards.

3. Tailor safeguards to the type of system, the nature of the information involved, and the specific threat to be countered.

C. Minimum Administrative Safeguard

The minimum safeguarding standards as set forth in paragraph (b) of § 286a.13, Subpart B apply to all personal data within any ADP system. In addition:

1. Consider the following when establishing ADP safeguards:

a. The sensitivity of the data being processed, stored and accessed;

b. The installation environment;

c. The risk of exposure;

d. The cost of the safeguard under consideration.

2. Label or designate output and storage media products (intermediate and final) containing personal information that do not contain classified material in such a manner as to alert those using or handling the information of the need for special protection. Designating products "For Official Use Only" in accordance with Subpart E of 32 CFR Part 286, "DoD Freedom of Information Act Program," satisfies this requirement.

3. Mark and protect all computer products containing classified data in accordance with the DoD Information Security Program Regulation (32 CFR Part 159) and the ADP Security Manual (DoD 5200.28-M).

4. Mark and protect all computer products containing "For Official Use Only" material in accordance with Subpart E of 32 CFR Part 286.

5. Ensure that safeguards for protected information stored at secondary sites are appropriate.

6. If there is a computer failure, restore all protected information being processed at the time of the failure using proper recovery procedures to ensure data integrity.

7. Train all ADP personnel involved in processing information subject to this part in proper safeguarding procedures.

D. Physical Safeguards

1. For all unclassified facilities, areas, and devices that process information subject to this part, establish physical safeguards that protect the information against reasonably identifiable threats that could result in unauthorized access or alteration.

2. Develop access procedures for unclassified computer rooms, tape libraries, micrographic facilities, decollating shops, product distribution areas, or other direct support areas that process or contain personal information subject to this part that control adequately access to these areas.

3. Safeguard on-line devices directly coupled to ADP systems that contain or process information from systems of records to prevent unauthorized disclosure use or alteration.

4. Dispose of paper records following appropriate record destruction procedures.

E. Technical Safeguards

1. The use of encryption devices solely for the purpose of protecting unclassified personal information transmitted over communication circuits or during processing in computer systems is normally discouraged. However, when a comprehensive risk assessment indicates that encryption is cost-effective it may be used.

2. Remove personal data stored on magnetic storage media by methods that preclude reconstruction of the data.

3. Ensure that personal information is not inadvertently disclosed as residue when transferring magnetic media between activities.

4. When it is necessary to provide dial-up remote access for the processing of personal information, control access by computer-verified passwords. Change passwords periodically or whenever compromise is known or suspected.

5. Normally the passwords shall give access only to those data elements (fields) required and not grant access to the entire data base.

6. Do not rely totally on proprietary software products to protect personnel data during processing or storage.

F. Special Procedures

1. System Managers shall:

a. Notify the ADP manager whenever personal information subject to this Regulation is to be processed by an ADP facility.

b. Prepare and submit for publication all system notices and amendments and alterations thereto (see paragraph (f) of § 286a.60 of Subpart G).

c. Identify to the ADP manager those activities and individuals authorized access to the information and notify the manager of any changes to the access authorizations.

2. ADP personnel shall:

a. Permit only authorized individuals access to the information.

b. Adhere to the established information protection procedures and rules of conduct.

c. Notify the system manager and ADP manager whenever unauthorized personnel seek access to the information.

3. ADP installation managers shall:

a. Maintain an inventory of all computer program applications used to process information subject to this part to include the identity of the systems of records involved.

b. Verify that requests for new programs or changes to existing programs have been published as required (see paragraphs (a) and (b) of § 286a.63, Subpart G).

c. Notify the system manager whenever changes to computer installations, communications networks, or any other changes in the ADP environment occur that require an altered system report be submitted (see paragraph (b) of § 286a.63, Subpart G).

G. Record Disposal

1. Dispose of records subject to this part so as to prevent compromise (see paragraph (c) of § 286a.13 of Subpart B). Magnetic tapes or other magnetic medium, may be cleared by degaussing, overwriting, or erasing. Unclassified carbon ribbons are considered destroyed when placed in a trash receptacle.

2. Do not use respliced waste computer products containing personal data.

H. Risk Assessment for ADP Installations That Process Personal Data

1. A separate risk assessment is not required for ADP installations that process classified material. A simple certification by the appropriate ADP official that the facility is cleared to process a given level of clas-

sified material (such as, Top Secret, Secret, or Confidential) and that the procedures followed in processing "For Official Use Only" material are to be followed in processing personal data subject to this Regulation is sufficient to meet the risk assessment requirement.

2. Prepare a formal risk assessment for each ADP installation (to include those activities with terminals and devices having access to ADP facilities) that processes personal information subject to this part and that do not process classified material.

3. Address the following in the risk assessment:

a. Identify the specific systems of records supported and determine their impact on the mission of the user.

b. Identify the threats (internal, external, and natural) to the data.

c. Determine the physical and operational (to include software) vulnerabilities.

d. Evaluate the relationships between vulnerabilities and threats.

e. Assess the impact of unauthorized disclosure or modification of the personal information.

f. Identify possible safeguards and their relationships to the threats to be countered.

g. Analyze the economic feasibility of adopting the identified safeguards.

h. Determine the safeguard to be used and develop implementation plans.

i. Discuss contingency plans including operational exercise plans.

j. Determine if procedures proposed are consistent with those identified in the system notices for system of records concerned.

k. Include a vulnerability assessment.

3. The risk assessment shall be reviewed by the appropriate Component officials.

4. Conduct a risk assessment at least every 5 years or when there is a change to the installation, its hardware, software, or administrative procedures that increase or decrease the likelihood of compromise or present new threats to the information.

5. Protect the risk assessment as it is a sensitive document.

6. Retain a copy of the risk assessment at the installation and make it available to appropriate inspectors and authorized personnel.

7. Include a summary of the current risk assessment with any report of new or altered system submitted in accordance with paragraph (c) of § 286a.63, Subpart G, for any system from which information will be processed.

8. Complete a formal risk assessment at the beginning of the design phase for each new unclassified ADP installation and before beginning the processing of personal data on a regular basis in existing ADP facility that do not process classified data.

Appendix B—Special Considerations for Safeguarding Personal Information During Word Processing

(See paragraph (b) of § 286a.13, Subpart B)

A. Introduction

1. Normally, word processing support is provided under two general concepts. They are:

a. Word processing centers (WPCs), and

b. Work groups or clusters.

2. A WPC generally provides support to one or more functional areas. Characteristically, the customer delivers (by written draft or dictation) the information to be processed to the WPC. The WPC process the information and returns it to the customer. There are generally two types of WPCs.

a. A WPC may operate independent of the customer's functon, providing service in much the same manner as a data processing installation provides ADP support, or a message center provides electronic message service, or

b. A WPC may work within a customer's function providing support to that function. The support being centralized in a WPC to take advantage of increased productivity.

3. A work group or cluster generally consists of one or more pieces of word processing equipment that are integrated into the functional office support system. The overall word processing and functional management may be one and the same. Depending on the size of the support job, there may be a work group or cluster manager. Normally, however, they will be located within or in close proximity to the functional area supported. Information flows in and out of the work group or cluster by normal office routine and the personnel are an integral part of the office staff.

B. Minimum Standards of Protection

1. Regardless of configuration (WPC or work group), all personal data processed using word processing equipment shall be afforded the standards of protection required by paragraph (b) of § 286a.13, Subpart B.

2. The remaining special considerations discussed in this Appendix are primarily for WPCs operating independent of the customer's function. However, managers of other WPCs, work groups, and work clusters are encouraged to consider and adopt, when appropriate, the special considerations discussed herein.

3. WPCs that are not independent of a customer's function, work groups, and work clusters are not required to prepare formal

written risk assessments (see section H., below).

C. WPC Information Flow

1. In analyzing procedures required to safeguard adequately personal information in a WPC, the basic elements of WPC information flow and control must be considered. These are:

a. Information receipt.

b. Information processing.

c. Information return.

d. Information storage or filing.

2. WPCs do not control information acquisition or its ultimate use by the customers and, therefore, these are not addressed.

D. Safeguarding Information During Receipt

1. The word processing manager shall establish procedures.

a. That require each customer who requests that information subject to this part be processed to identify specifically that information to the WPC personnel. This may be done by:

(1) Providing a check-off type entry on the WPC work requests;

(2) Requiring that the WPC work requests be stamped with a special legend, or that a special notation be made on the work requests;

(3) Predesignating specifically a class of documents as coming within the provisions of this part (such as, all officer effectiveness reports, all recall rosters, and all medical protocols).

(4) Using a special cover sheet both to alert the WPC personnel as to the type information, and to protect the document during transmittal;

(5) Requiring an oral warning on all dictation; or

(6) Any other procedures that ensure the WPC personnel are alerted to the fact that personal data subject to this part is to be processed.

b. To ensure that the operators or other WPC personnel receiving data for processing that has not been identified to be under the provisions of this part but that appear to be personal promptly call the information to the attention of the WPC supervisor or the customer;

c. To ensure that any request for the processing of personal data that the customer has not identified as being in a system of records and that appears to meet the criteria set forth in paragraph (a) of § 286a.10, Subpart B is called to the attention of the appropriate supervisory personnel and system manager.

2. The WPC supervisor shall ensure that personal information is not inadvertently compromised within the WPC.

E. Safeguarding Information During Processing

1. Each WPC supervisor shall establish internal safeguards that shall protect personal data from compromise while it is being processed.

2. Physical safeguards may include:

a. Controls on individual access to the center;

b. Machine configurations that reduce external access to the information being processed, or arrangements that alert the operator to the presence of others;

c. Using certain specific machines to process personal data;

d. Any other physical safeguards, to include special technical arrangements that will protect the data during processing.

3. Other safeguards may include:

a. Using only certain selected operators to process personal data;

b. Processing personal data only at certain times during the day without the WPC manager's specific authorization.

c. Using only certain tapes or diskettes to process and store personal data;

d. Using continuous tapes for dictation of personal data;

e. Requiring all WPC copies of documents to be marked specifically so as to prevent inadvertent compromise;

f. Returning extra copies and mistakes to the customer with the product;

g. Disposing of waste containing personal data in a special manner;

h. Any other local procedures that provide adequate protection to the data being processed.

F. Safeguarding Information During Return

1. The WPC shall protect the data until it is returned to the customer or placed into a formal distribution channel.

2. In conjunction with the appropriate administrative support personnel and the WPC customers, the WPC manager shall establish procedures that protect the information from the time word processing is completed until it is returned to the customer.

3. Safeguarding procedures may include:

a. Releasing products only to specifically identifiable individuals;

b. Using sealed envelopes to transmit products to the customer;

c. Using special cover sheets to protect products similar to the one discussed in subparagraph D.1.a.(4) above;

d. Handcarrying products to the customers;

e. Using special messengers to return the products;

f. Any other procedures that protect adequately products from compromise while they are awaiting return or being returned to the customer.

G. Safeguards During Storage

1. The WPC manager shall ensure that all personal data retained in the center for any purpose (including samples) are protected properly.

2. Safeguarding procedures may include:

a. Marking all hard copies retained with special legends or designators;

b. Storing media containing personal data in separate files or areas;

c. Marking the storage containers for media containing personal data with special legends or notations;

d. Restricting the reuse of media used to process personal data or erasing automatically the media before reuse;

e. Establishing special criteria for the WPC retention of media used to store and process personal data;

f. Returning the media to the customer for retention with the file copies of the finished products;

g. Discouraging, when practical, the long-term storage of personal data in any form within the WPC;

h. Any other filing or storage procedures that safeguard adequately any personal information retained or filed within the WPC.

H. Risk Assessment for WPC's

1. Each WPC manager shall ensure that a formal, written risk assessment is prepared for each WPC that processes personal information subject to this part.

2. The assessment shall address the areas discussed in sections D., E., F., and G. of this Appendix, as well as any special risks that the WPC location, configuration, or organization may present to the compromise or alteration of personal data being processed or stored.

3. A risk assessment shall be conducted at least every 5 years or whenever there is a change of equipment, equipment configuration, WPC location, WPC configuration or modification of the WPC facilities that either increases or decreases the likelihood of compromise of personal data.

4. Copies of the assessment shall be retained by the WPC manager and made available to appropriate inspectors, as well as to personnel studying equipment for facility upgrading or modification.

5. Every new WPC shall have a formal risk assessment completed before beginning the processing of personal data.

I. Special Considerations in WPC Design and Modification

Procedures shall be established to ensure that all personnel involved in the design of WPCs or the acquisition of word processing equipment are aware of the special considerations required when processing personal data subject to this part.

APPENDIX C—DOD BLANKET ROUTINE USES

(See paragraph (e) of § 286a.41, Subpart E)

A. Routine Use—Law Enforcement

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. Routine Use—Disclosure when Requesting Information

A record from a system of records maintained by a Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. Routine Use—Disclosure of Requested Information

A record from a system of records maintained by a Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary tothe requesting agency's decision on the matter.

D. Routine Use—Congressional Inquiries

Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

E. Routine Use—Private Relief Legislation

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the OMB in connection with the review of private relief legislation as set forth in OMB Circular A-19 (reference (u)) at any stage of the legislative coordination and clearance process as set forth in that Circular.

F. Routine Use—Disclosures Required by International Agreements

A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

G. Routine Use—Disclosure to State and Local Taxing Authorities

Any information normally contained in Internal Revenue Service (IRS) Form W-2 which is maintained in a record from a system of records maintained by a Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 (reference (v)) and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76-07.

H. Routine Use—Disclosure to the Office of Personnel Management

A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

I. Routine Use—Disclosure to the Department of Justice for Litigation

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

J. Routine Use—Disclosure to Military Banking Facilities Overseas

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

K. Routine Use—Disclosure of Information to the General Services Administration (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

L. Routine Use—Disclosure of Information to the National Archives and Records Administration (NARA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

M. Routine Use—Disclosure to the Merit Systems Protection Board

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

APPENDIX D—PROVISIONS OF THE PRIVACY ACT FROM WHICH A GENERAL OR SPECIFIC EXEMPTION MAY BE CLAIMED

[See paragraph (d) of § 286a.50, Subpart F]

Exemption		Section of the Privacy Act
(j)(2)	(k)(1-7)	
No	No	(b)(1) Disclosures within the Department of Defense
No	No	(2) Disclosures to the public
No	No	(3) Disclosures for a "routine use"
No	No	(4) Disclosures to the Bureau of Census
No	No	(5) Disclosures for statistical research and reporting
No	No	(6) Disclosures to the National Archives
No	No	(7) Disclosures for law enforcement purposes
No	No	(8) Disclosures under emergency circumstances
No	No	(9) Disclosures to the Congress
No	No	(10) Disclosures to the General Accounting Office
No	No	(11) Disclosures pursuant to court orders
No	No	(12) Disclosure to consumer reporting agencies
No	No	(c)(1) Making disclosure accountings
No	No	(2) Retaining disclosure accountings
Yes	Yes	(c)(3) Making disclosure accounting available to the individual
Yes	No	(c)(4) Informing prior recipients of corrections
Yes	Yes	(d)(1) Individual access to records
Yes	Yes	(2) Amending records
Yes	Yes	(3) Review of the component's refusal to amend a record
Yes	Yes	(4) Disclosure of disputed information
Yes	Yes	(5) Access to information compiled in anticipation of civil action
Yes	Yes	(e)(1) Restrictions on collecting information
Yes	No	(e)(2) Collecting directly from the individual
Yes	No	(3) Informing individuals from whom information is requested
No	No	(e)(4)(A) Describing the name and location of the system
No	No	(B) Describing categories of individuals
No	No	(C) Describing categories of records
No	No	(D) Describing routine uses
No	No	(E) Describing records management policies and practices
No	No	(F) Identifying responsible officials
Yes	Yes	(e)(4)(G) Procedures for determining if a system contains a record on an individual
Yes	Yes	(H) Procedures for gaining access
Yes	Yes	(I) Describing categories of information sources
Yes	No	(e)(5) Standards of accuracy
No	No	(e)(6) Validating records before disclosure
No	No	(e)(7) Records of first amendment activities
No	No	(e)(8) Notification of disclosure under compulsory legal process
No	No	(e)(9) Rules of conduct

APPENDIX D—PROVISIONS OF THE PRIVACY ACT FROM WHICH A GENERAL OR SPECIFIC EXEMPTION MAY BE CLAIMED—Continued

[See paragraph (d) of § 286a.50, Subpart F]

Exemption		Section of the Privacy Act
(j)(2)	(k)(1-7)	
No	No	(e)(10) Administrative, technical and physical safeguards
No	No	(11) Notice for new and revised routine uses
Yes	Yes	(f)(1) Rules for determining if an individual is subject of a record
Yes	Yes	(f)(2) Rules for handling access requests
Yes	Yes	(f)(3) Rules for granting access
Yes	Yes	(f)(4) Rules for amending records
Yes	Yes	(f)(5) Rules regarding fees
Yes	No	(g)(1) Basis for civil action
Yes	No	(g)(2) Basis for judicial review and remedies for refusal to amend
Yes	No	(g)(3) Basis for judicial review and remedies for denial of access
Yes	No	(g)(4) Basis for judicial review and remedies for other failure to comply
Yes	No	(g)(5) Jurisdiction and time limits
Yes	No	(h) Rights of legal guardians
No	No	(i)(1) Criminal penalties for unauthorized disclosure
No	No	(2) Criminal penalties for failure to publish
No	No	(3) Criminal penalties for obtaining records under false pretenses
Yes	No	(j) Rulemaking requirement
N/A	No	(j)(1) General exemption for the Central Intelligence Agency
N/A	No	(j)(2) General exemption for criminal law enforcement records
Yes	N/A	(k)(1) Exemption for classified material
N/A	N/A	(k)(2) Exemption for law enforcement material
Yes	N/A	(k)(3) Exemption for records pertaining to Presidential protection
Yes	N/A	(k)(4) Exemption for statistical records
Yes	N/A	(k)(5) Exemption for investigatory material compiled for determining suitability for employment or service
Yes	N/A	(k)(6) Exemption for testing or examination material
Yes	N/A	(k)(7) Exemption for promotion evaluation materials used by the Armed Forces
Yes	No	(l)(1) Records stored in GSA records centers
Yes	No	(l)(2) Records archived before Sept 27, 1975
Yes	No	(l)(3) Records archived on or after Sept 27, 1975
Yes	No	(m) Applicability to Government contractors
Yes	No	(n) Mailing lists
Yes [1]	No	(o) Reports on new systems
Yes [1]	No	(p) Annual report

[1] See paragraph (d) of § 286a.50, Subpart F

APPENDIX E—SAMPLE OF NEW OR ALTERED SYSTEM OF RECORDS NOTICE IN "FEDERAL REGISTER" FORMAT

(See paragraph (f) of § 286a.60, Subpart G)

DEPARTMENT OF DEFENSE

DEFENSE NUCLEAR AGENCY

PRIVACY ACT OF 1974; NEW SYSTEM OF RECORDS

AGENCY: Defense Nuclear Agency (DNA).

ACTION: Notice of a new record system.

SUMMARY: The Defense Nuclear Agency is adding a new system of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notice for the new system is set forth below.

DATES: This system shall be effective (30 days after publication in the Federal Register) unless comments are received which result in a contrary determination.

ADDRESS: Send comments to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Robert L. Brittigan, General Counsel, Defense Nuclear Agency, Washington, D.C. 20305, Telephone (202) 325 7681.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Agency record system notice as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have appeared in the FEDERAL REGISTER on September 28, 1981 (46 FR 51073) and February 16, 1982 (47 FR 6829).

The Defense Nuclear Agency has submitted a new system report on March 27, 1982, for this system of records under the provisions of 5 U.S.C. 552a(o) of the Privacy Act.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

Sample

HDNA 609 03

System name: Personnel Exposed to Radiation from Nuclear Tests.

System Location: Headquarters, Defense Nuclear Agency, Washington, D.C. 20305, Main computer location.

Categories of individuals covered by the system: All DoD and DoD-affiliated personnel, military and civilian, who participated in the U.S. Government atmospheric nuclear test programs in the Pacific and at the Nevada Test Site.

Categories of records in the system: Personal information consisting of name, rank, service number, last known or current address, dates of test participation, exposure and unit of assignment.

Authority for maintenance of the system: 10 U.S.C. Section 133, Powers of an Executive Department of a Military Department to Prescribe Departmental Regulations; 10 U.S.C. Section 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; DoD Directive 5105.31, "Defense Nuclear Agency (DNA)."

Purpose(s): To identify those individuals who may have been exposed to radiation from nuclear atmospheric test conducted by the U.S. Government in the Pacific or at the Nevada Test Site.

Information is provided to the medical services of all the Military Departments to identify military and retired personnel who were exposed to ionizing radiator during testing.

Routine uses of records maintained in the system including categories of users, and the purpose of such uses:

To the National Research Council and Center for Disease Control to determine the effects of ionizing radiation for the limited purpose of conducting epidemiological studies of the atmospheric nuclear weapons tests on DoD participants in those tests.

To the Department of Energy (DoE) to identify DoE contractor personnel exposed to ionizing radiation during nuclear testing for the limited purpose of conducting epidemiological studies of radiation effects of individuals so identified.

To the Department of Transportation (DoT) for the limited purpose of identifying DoT and DoT-affiliated personnel exposed to ionizing radiation during nuclear testing.

To the Veterans Administration to make determinations on service-connected disability for the purpose of resolving claims.

Policies and Practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

Storage: Paper records in file folders; computer magnetic tape disks and printouts in secure computer facility.

Retrievability: Paper records filed in folders and computer magnetic tape and disk retrieved by name.

Safeguards: Paper records are filed in folders stored in locked security safes. Magnetic tapes stored in a vault in a secure computer area.

Retention and disposal: Paper records are retained until information is transferred to magnetic tapes; then destroyed. Magnetic tapes and disks are retained indefinitely.

System manager(s) and address: Director, Defense Nuclear Agency, Attn.: Privacy Act Officer, Washington, D.C. 20305, telephone (202) 325 7681.

Notification procedure: Information may be obtained from the System Manager.

Record access procedures: Requests should be addressed to the System Manager.

Contesting record procedures: The agency's rules for contesting contents and appealing initial determinations are contained in DNA Instruction 5400.11 (32 CFR Part 291a). Additional information may be obtained from the System Manager.

Record source categories: DNA records, searches of DoD records by other DoD Components, and from individuals voluntarily contacting DNA by telephone or mail.

Systems exempted from certain provision of the Act: None.

APPENDIX F—FORMAT FOR NEW OR ALTERED SYSTEM REPORT

(See paragraph (c) of § 286a.63, Subpart G)

The report on a new or altered system shall consist of a transmittal letter, a narrative statement, and include supporting documentation.

A. *Transmittal Letter.* The transmittal letter to the Director, Defense Privacy Office, ODASD(A), shall include any request for waivers as set forth in paragraph (g) of § 286a.[illegible] Subpart G. The narrative statement shall be attached thereto.

B. *Narrative Statement.* The narrative statement is typed in double space on standard bond paper in the format shown at attachment 1. The statement includes:

1. *System identification and name.* This caption sets forth the identification and name of the system (see paragraphs (b) and (c) of § 286a.62, Subpart G).

2. *Responsible official.* The name, title, address, and telephone number of the privacy official responsible for the report and to whom inquiries and comments about the report may be directed by Congress, the Office of Management and Budget, or Defense Privacy Office.

3. *Purpose of the system or nature of the change proposed.* Describe the purpose of the new system. For an altered system, describe the nature of the change being proposed.

4. *Authority for the system.* See paragraph (g) of § 286a.62, Subpart G.

5. *Number of individuals.* The approximate number of individuals about whom records are to be maintained.

6. *Information on First Amendment activities.* Describe any information to be kept on the exercise of individual's First Amendment rights and the basis for maintaining it as provided for in paragraph (e) of § 286a.10, Subpart B.

7. *Measures to ensure information accuracy.* If the system is to be used to make determinations about the rights, benefits, or entitlements of individuals; describe the measures being established to ensure the accuracy, currency, relevance, and completeness of the information used for these purposes.

8. *Other measures to ensure system security:* Describe the steps taken to minimize the risk of unauthorized access to the system. A more detailed assessment of security risks and specific administrative, technical, and physical safeguards shall be available for review upon request.

9. *Relationship to state and local government activities.* Describe the relationship of the system to state or local government activities that are the sources, recipients, or users of the information in the system.

C. *Supporting Documentation.* Item 10 of the narrative is captioned *Supporting Documents.* A positive statement for this caption is essential for those enclosures that are not required to be enclosed. For example, "No changes to the existing Army procedural or exemption rules (32 CFR Part 505) are required for this proposed system." List in numerical sequence only those enclosures that are actually furnished. The following are typical enclosures that may be required:

1. For a new system, an advance copy of the system notice which is proposed for publication. For an altered system (see paragraph (d) of § 286a.64, Subpart G) an advance copy of the notice reflecting the specific changes proposed.

2. An advance copy of any new rules or changes to the published Component rules to be issued for the new or altered system. If no change to existing rules is required, so state in the narrative.

3. An advance copy of any proposed exemption rule if the new or altered system is to be exempted in accordance with Subpart F. If there is no exemption, so state in the narrative.

4. Any other supporting documentation that may be pertinent or helpful in understanding the need for the system or clarifying its intended use. While not required, such documentation, when available, is helpful in evaluating the new or altered system.

ATTACHMENT 1—SAMPLE FORMAT FOR NARRATIVE STATEMENT

DEPARTMENT OF DEFENSE

(Component Name)

REPORT ON NEW (OR ALTERED) SYSTEM UNDER THE PRIVACY ACT OF 1974

(Indicate none or not applicable, as appropriate.)

1. *System Identification and name:*
2. *Responsible official:*

3. *Purpose(s) of the System:* (for a new system only) or *Nature of the Change(s) Proposed:* (for altered system).

4. *Authority for the System:*

5. *Number of Individuals:*

6. *Information on First Amendment Activities:*

7. *Measures to Ensure Information Accuracy:*

8. *Other Measures to Ensure System Security:*

9. *Relations to State or Local Government Activities:*

10. *Supporting Documentation:* (Indicate here, as a positive statement, those enclosures *not* required as set forth in section C. of the format instructions.)

SIGNATURE BLOCK OF SUBMITTING OFFICIAL

Attachment 2—Sample Report

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

REPORT ON NEW SYSTEM UNDER THE PRIVACY ACT OF 1974

1. *System Identification and Name:* HDNA 609-03, entitled "Personnel Exposed To Radiation From Nuclear Tests."

2. *Responsible Official:* Robert L. Brittigan, General Counsel, Defense Nuclear Agency, Washington, D.C. 20305. Telephone: Area Code 202 325-7781.

3. *Purpose(s) of the System:* To consolidate into one system the names, addresses, and exposures of all DoD or DoD-assoicated personnel who may have been exposed to ionizing radiation during the atmospheric nuclear testing programs in the Pacific and at the Nevada Test Site.

4. *Authority for the System:* See "Authority for Maintenance of the System" caption of the attached proposed system notice.

5. Number of Individuals: Approximately 300,00 individuals will be affected by this new system, since the system includes all DoD and DoD-affiliated participants in the atmospheric nuclear tests program.

6. *Information on First Amendment Activities:* None.

7 *Measures to Ensure Information Accuracy:* Records consist of personal data to be provided by the individual such as name, rank, service number, last known or current address, dates of test participation, exposure date, if available, and unit of assignment. When the information has been obtained from sources other than the individual, follow up is attempted to ensure accuracy.

8. *Other Measures to Ensure System Security:*

a. Paper records before processing for computer storage are retained in locked filing cabinets located in limited access facilities at DNA Headquarters and the Armed Forces Radiobiology Research Institute.

b. Privacy data in the Headquarters, DNA, ADP facility is afforded the same protection as classified data in that the DNA computer system employs a File Security System (FSS) to protect classified and privacy data files from being accessed by unauthorized user.

9. *Relations to State and Local Government Activities:* None

10. *Supporting Documentation:* No changes to existing procedural or exemption rules are required for this proposed new system.

Robert L. Brittigan
General Counsel

Enclosures—2

1. Advance copy of proposed system notice.

2. Copy of tasking memorandum from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) to the Director, Defense Nuclear Agency, "DoD Personnel Participation in Atmospheric Nuclear Weapons Testing," January 28, 1978.

Note: Enclosures are not included in the sample, above.

Appendix G—Sample Deletions and Amendments to Systems Notices in "Federal Register" Format

(See paragraph (d) of § 286a.64, Subpart G)

DEPARTMENT OF DEFENSE

Department of Air Force

Privacy Act of 1974; Deletions and Amendments to Systems of Records Notices

Agency: Department of the Air Foce, DoD.

Action: Notice of deletions and amendments to systems of records.

Summary: The Air Force proposes to delete three and amend two notices for systems of records subject to the Privacy Act of 1974. The specific changes to the notices being amended are set forth below followed by the system notices, as amended, published in their entirety.

Dates: These systems notices shall be amended as proposed without further notice on (30 days after publication in the Federal Register unless comments are received that would result in a contrary determination.

Address: Send comments to the system manager identified in the particular system notice concerned.

FOR FURTHER INFORMATION CONTACT: Mr. Jon E. Updike, HQ USAF/DAQD, The Pentagon, Washington, D.C. 20330-5024, Telephone: (202) 694-3431 Autovon: 224-3431

SUPPLEMENTARY INFORMATION: The Air Force sytems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the FEDERAL REGISTER as follows:

FR Doc. 80-28255 (46 FR 50785) September 28, 1980

FR Doc. 80-31218 (46 FR 56774) October 28, 1980

FR Doc. 80-32284 (46 FR 58195) November 8, 1980

FR Doc. 80-33780 (46 FR 59996) November 23, 1980

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

F01001 OQPTFLA

System name: Human Reliability for Special Missions.

Reason: This system is covered by F03004 AFDPMDB Advanced Personnel Data System (APDS) (46 FR 50821) August 28, 1981.

F01003 OBXQPCA

System name: Cadet Promotion List.

Reason: This system has been incorporated into F03502 AFA A Cadet Management System (46 FR 50875) July 28, 1981.

F01102 OYUEBLA

System name: Locator or Personnel Data file.

Reason: This sytem is covered by F01102 DAYX A Base, Unit, and Organizational Military and Civilian Personnel Locator Files (46 FR 50800) October 28, 1981.

AMENDMENTS

F03501 DPMDQIA

System name: Military Personnel Records System.

Changes:

System Location: In line 8, change "Adjustment" to Adjutant".

External users, uses and purposes:

Add at end:

"American National Red Cross. Information to local Red Cross offices for emergency assistance to military members, dependents, relatives, or other persons if conditions are compelling."

"Drug Enforcement Administration" (added to those agencies listed under Department of Justice).

"Department of Labor: Bureau of Employees' Compensation—medical information for claims of civilian employees formerly in military service; Employment and Training Administration—verification of service-related information for unemployment compensation claims; Labor-Management Services Administration—for investigations of possible violations of labor laws and preemployment investigations; National Research Council—for medical research purposes; U.S. Soldiers' and Airmen's Home—service information to determine eligibility."

F03504 OJMPLSC

System name: Assessments Screening Records.

Changes:

System location: In line 1, change "3700 Personnel Processing Group" to "3507 Airman Classification Squadron."

Retention and disposal: Delete entry and substitute: "Records on airmen accepted for sensitive or high risk assignments are retained in the office files for 18 months, then destroyed. Records of nonselectees are retained in office files for 1 year, then destroyed. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning."

Systems manager: In line 1, change "3700 PPGP (CCO)," to "3507 Airman Classification Squadron."

Record source categories: Add at end, "peers, character references, and the individual member."

APPENDIX H—LITIGATION STATUS SHEET

(See § 286a.104, Subpart K)

1. Case Number.[1]

2. Requester.

3. Document Title or Description.[2]

4. Litigation:

a. Date Complaint Filed.

b. Court.

c. Case File Number [1]

5. Defendants (DoD Component and individual).

6. Remarks (brief explanation of what the case is about).

7. Court Action:

a. Court's Finding.

b. Disciplinary Action (as appropriate).

8. Appeal (as appropriate):

---

[1] Number used by the Component for reference purposes

[2] Indicate the nature of the case, such as, "Denial of access," "Refusal to amend," "Incorrect records," or other violations of the Act (specify).

a. Date Complaint Filed.
b. Court.
c. Case File Number.
d. Court's Finding.
e. Disciplinary Action (as appropriate).

APPENDIX I—OFFICE OF MANAGEMENT AND BUDGET (OMB)

Matching Guidelines

(See § 286a.110, Subpart L)

A. *Purpose.* These guidelines supplement and shall be used in conjunction with OMB Guidelines on the Administration of the Privacy Act of 1974, issued on July 1, 1975, and supplemented on November 21, 1975. They replace earlier guidance on conducting computerized matching programs issued on March 30, 1979. They are intended to help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching. They are designed to address the concerns expressed by the Congress in the Privacy Act of 1974 that "the increasing use of computers and sophisticated information technology, while essential to the efficient operation of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." These guidelines do not authorize activities that are not permitted by law, nor do they prohibit activities expressly required to be performed by law. Complying with these guidelines, however, does not relieve a federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited in these guidelines.

B. *Scope.* These guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a) and to all matching programs:

1. Performed by a federal agency, whether the personal records used in the match are federal or nonfederal.

2. For which a federal agency discloses any personal records for use in a matching program performed by any other federal agency or any nonfederal organization.

C. *Effective Date.* These guidelines are effective on May 11, 1982.

D. *Definitions.* For the purposes of the Guidelines, all the terms defined in the Privacy Act of 1974 apply.

1. *Personal Record.* Any information pertaining to an individual that is stored in an automated system of records; for example, a data base which contains information about individuals that is retrieved by name or some other personal identifier.

2. *Matching Program.* A procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of nonfederal records to find individuals who are common to more than one system or set. The procedure includes all of the steps associated with the match, including obtaining the records to be matched, actual use of the computer, administrative and investigative action on the hits, and disposition of the personal records maintained in connection with the match. It should be noted that a single matching program may involve several matches among a number of participants. Matching programs do not include the following:

a. Matches that do not compare a substantial number of records, such as, comparison of the Department of Education's defaulted student loan data base with the Office of Personnel Management's federal employee data base would be covered; comparison of six individual student loan defaultees with the OPM file would not be covered.

b. Checks on specific individuals to verify data in an application for benefits done reasonably soon after the application is received.

c. Checks on specific individuals based on information which raises questions about an individual's eligibility for benefits or payments done reasonably soon after the information is received.

d. Matches done to produce aggregate statistical data without any personal identifiers.

e. Matches done to support any research or statistical project when the specific data are not to be used to make decisions about the rights, benefits, or privileges of specific individuals.

f. Matches done by an agency using its own records.

3. *Matching Agency.* The federal agency which actually performs the match.

4. *Source Agency.* The federal agency which discloses records from a system of records to be used in the match. Note that in some circumstances a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match. The disclosure of records to the matching agency and any later disclosure of "hits" (by either the matching or the source agencies) must be done in accordance with the provisions of paragraph (b) of the Privacy Act.

5. *Hit.* The identification, through a matching program, of a specific individual.

E. *Guidelines for Agencies Participating in Matching Programs.* Agencies should acquire and disclose matching records and conduct matching programs in accordance with the provisions of this section and the Privacy Act.

1. *Disclosing Personal Records for Matching Programs.*

a. *To another federal agency.* Source agencies are responsible for determining whether or not to disclose personal records from their systems and for making sure they meet the necessary Privacy Act disclosure provisions when they do. Among the factors source agencies should consider are:

(1) Legal authority for the match;

(2) Purpose and description of the match;

(3) Description of the records to be matched;

(4) Whether the record subjects have consented to the match; or whether disclosure of records for the match would be compatible with the purpose for which the records were originally collected; that is, whether disclosure under a "routine use" would be appropriate; whether the soliciting agency is seeking the records for a legitimate law enforcement activity--whichever is appropriate; or any other provision of the Privacy Act under which disclosure may be made;

(5) Description of additional information which may be subsequently disclosed in relation to "hits";

(6) Subsequent actions expected of the source (for example, verification of the identity of the "hits" or follow-up with individuals who are "hits");

(7) Safeguards to be afforded the records involved, including disposition.

b. If the agency is satisfied that disclosure of the records would not violate its responsibilities under the Privacy Act, it may proceed to make the disclosure to the matching agency. It should ensure that only the minimum information necessary to conduct the match is provided. If disclosure is to be made pursuant to a "routine use" (Section (b)(3) of the Privacy Act), it should ensure that the system of records contains such a use, or it should publish a routine use notice in the Federal Register. The agency should also be sure to maintain an accounting of the disclosures pursuant to Section (c) of the Privacy Act.

c. To a nonfederal entity. Before disclosing records to a nonfederal entity for a matching program to be carried out by that entity, a source agency should, in addition to all of the consideration in paragraph E.1.a., above, also make reasonable efforts, pursuant to Section (e)(6) of the Privacy Act, to "assure that such records are accurate, complete, timely, and relevant for agency purposes."

2. *Written Agreements.* Before disclosing to either a federal or nonfederal entity, the source agency should require the matching entity to agree in writing to certain conditions governing the use of the matching file; for example, that the matching file will remain the property of the source agency and be returned at the end of the matching program (or destroyed as appropriate), that the file will be used and accessed only to match the file or files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose, and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency.

3. *Performing Matching Programs.* (a) Matching agencies should maintain reasonable administrative, technical, and physical security safeguards on all files involved in the matching program.

(b) Matching agencies should insure that they have appropriate systems of records including those containing "hits," and that such systems and any routine uses have been appropriately noticed in the Federal Register and reported to OMB and the Congress, as appropriate.

4. *Disposition of Records.* a. Matching agencies will return or destroy source matching files (by mutual agreement) immediately after the match.

b. Records relating to hits will be kept only so long as an investigation, either criminal or administrative, is active, and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule.

5. *Publication Requirements.* a. Agencies, before disclosing records outside the agency, will publish appropriate "routine use" notices in the Federal Register, if necessary.

b. If the matching program will result in the creation of a new or the substantial alteration of an existing system of records, the agency involved should publish the appropriate Federal Register notice and submit the requisite report to OMB and the Congress pursuant to OMB Circular No. A-108.

6. *Reporting Requirements.* a. As close to the initiation of the matching program as possible, matching agencies shall publish in the Federal Register a brief public notice describing the matching program. The notice should include:

(1) The legal authority under which the match is being conducted;

(2) A description of the matching program including whether the program is one time or continuing, the organizations involved, the purpose or purposes for which the program is being conducted, and the procedures to be used in matching and following up on the "hits";

(3) A complete description of the personal records to be matched, including the source or sources, system of records identifying data, date or dates and page number of the most recent Federal Register full text publication when appropriate;

(4) The projected start and ending dates of the program;

(5) The security safeguards to be used to protect against unauthorized access or disclosure of the personal records; and

(6) Plans for disposition of the source records and "hits."

7. Agencies should send a copy of this notice to the Congress and to OMB at the same time it is sent to the FEDERAL REGISTER.

a. Agencies should report new or altered systems of records as described in paragraph E.5.b., above, as necessary.

b. Agencies should also be prepared to report on matching programs pursuant to the reporting requirements of either the Privacy Act or the Paperwork Reduction Act. Reports will be solicited by the Office of Information and Regulatory Affairs and will focus on both the protection of individual privacy and the government's effective use of information technology. Reporting instructions will be disseminated to the agencies as part of either the reports required by paragraph (p) of the Privacy Act, or Section 3514 of Pub. L. 96-511.

8. *Use of Contractors.* Matching programs should, as far as practicable, be conducted "in-house" by federal agencies using agency personnel, rather than by contract. When contractors are used, however,

a. The matching agency should, consistent with paragraph (m) of the Privacy Act, cause the requirements of that Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by Federal Personnel Regulation Amendment 155 (41 CFR 1-1.337-5);

b. The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards, and guidelines issued by OMB, GSA, and the Department of Commerce;

c. The terms of the contract should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use;

d. Contractor personnel involved in the matching program shall be made explicitly aware of their obligations under the Act and of these guidelines, agency rules, and any special safeguards in relation to each specific match performed.

e. Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (5 U.S.C. 552a(b)(3)).

F. *Implementation and Oversight.* OMB will oversee the implementation of these guidelines and shall interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

PART 286b—PRIVACY PROGRAM

Sec.

286b.1 Reissuance and purpose.
286b.2 Applicability and scope.
286b.3 Definitions.
286b.4 Policy.
286b.5 Responsibilities.
286b.6 Procedures.
286b.7 Procedures for exemptions.
286b.8 Information requirements.

AUTHORITY: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a)

SOURCE: 51 FR 7070, Feb. 28, 1986, unless otherwise noted.

§ 286b.1 Reissuance and purpose.

This part reissues Administrative Instruction No. 81 to update and implement basic policies and procedures outlined in Privacy Act of 1974, DoD 5400.11-R, OMB Circular No. A-108 (TM No. 4) and to provide guidance and procedures for use in establishing the Privacy Program in the Office of the Secretary of Defense (OSD) and those organizations assigned to OSD for administrative support.

§ 286b.2 Applicability and scope.

(a) This part applies to the OSD, Organization of the Joint Chiefs of Staff (OJCS), Inspector General of the Department of Defense (IG, DOD), Defense Advanced Research Projects Agency (DARPA), Uniformed Services University of the Health Sciences (USUHS) and other activities assigned to OSD for administrative support (hereafter referred to collectively as "OSD Components").

(b) This part covers record systems maintained by OSD Components and governs the maintenance, access, change, and release of information contained in OSD Component record systems, from which information pertaining to an individual is retrieved by a personal identifier.

§ 286b.3 Definitions.

Access. Any individual's review of a record or a copy of a record or parts of a system of records.

Disclosure. The transfer of any personal information from a system of records by any means of oral, written, electronic, mechanical, or other communication, to any person, private entity, or Government agency, other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

Individual access. Access to information pertaining to the individual or his or her designated agent or legal guardian.

Maintain. Includes maintenance, collection, use or dissemination.

Personal information. Information about an individual that is intimate or private, as distinguished from information related solely to the individual's official functions or public life.

§ 286b.4 Policy.

(a) It is DoD policy to protect the privacy of individuals involved in any phase of the personnel management process and to permit any individual to know what existing records pertain to him or her in any OSD Component covered by this part.

(b) Each office maintaining records and information about individuals shall ensure that their privacy is protected from unauthorized disclosure. These offices shall permit individuals to have access to, and to have a copy made of, all or any portion of records pertaining to them (except those referred to in Chapters 3 and 5, DoD 5400.11-R and to have an opportunity to request that such records be amended as provided by the Privacy Act of 1974. Individuals requesting access to their records shall receive concurrent consideration under the Privacy Act of 1974 and the Freedom of Information Act as amended, if appropriate.

(c) The heads of OSD Components shall maintain any record of an identifiable personal nature in a manner that is necessary and lawful. Any information collected must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information.

§ 286b.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense (Administration) (DASD(A)), Office of the Assistant Secretary of Defense (Comptroller) OASD(c)), shall:

(1) Direct and administer the DoD Privacy Program for OSD Components.

(2) Establish standards and procedures to ensure implementation of and compliance with the Privacy Act of 1974, OMB Circular No. A-108 (TM No. 4), and DoD 5400.11-R.

(3) Serve as the appellate authority within OSD when a requester appeals a denial for amendment of a record or initiates legal action to correct a record.

(4) Evaluate and decide, in coordination with the General Counsel (GC), DoD, appeals resulting from denials of correction and/or amendments to records by OSD Components.

(5) Designate the Records Management Division, Correspondence and Directives Directorate, Washington Headquarters Services (WHS), as the office responsible for all aspects of the Privacy Act, except that portion pertaining to receiving and acting on public requests for personal records. As such, the Records Management Division, shall:

(i) Exercise oversight and administrative control of the Privacy Act Program in OSD and those organizations assigned to OSD for administrative support.

(ii) Provide guidance and training to organizational entities as required by the Privacy Act of 1974 and OMB Circular A-108 (TM No. 4).

(iii) Collect and consolidate data from OSD Components, and submit an annual report to the Defense Privacy Office, as required by the Privacy Act of 1974, OMB Circular A-108 (TM No. 4) and DoD 5400.11-R.

(iv) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the Office of Management and Budget (OMB), the Congress, and the FEDERAL REGISTER, as required by the Privacy Act of 1974, OMB Circular No. A-108 (TM No. 4) and DoD 5400.11-R.

(v) Collect information from OSD Components, and prepare consolidated reports required by the Privacy Act of 1974 and DoD 5400.11-R.

(b) The Assistant Secretary of Defense (Public Affairs) (ASDC(A) shall:

(1) Designate the Director for Freedom of Information and Security Review, OASDP(A), as the point of contact for individuals requesting information or access to records and copies concerning themselves.

(2) Serve as the authority within OSD when requesters seek reconsideration of previously denied requests for access to records, and in coordination with the GC, DoD, and the DASD(A), evaluate and decide on such requests.

(c) The Director for Freedom of Information and Security Review shall:

(1) Forward requests for information or access to records to the appropriate OSD Component having primary responsibility for any pertinent system of records under the Privacy Act of 1974 or to OSD Components, under the Freedom of Information Act as amended.

(2) Maintain deadlines to ensure that responses are made within the time limits prescribed in DoD 5400.7-R, DoD Directive 5400.10 and this part.

(3) Collect fees charged and assessed for reproducing requested materials.

(4) Refer all matters concerning amendments of records and general and specific exemptions under the Privacy Act of 1974 to the proper OSD components.

(5) Authorize a specific field activity of an OSD Component to act as the point of contact for individuals requesting information or access to records or copies, under the Privacy Act of 1974 for which the field activity has primary responsibility. All authorizations by the ASD(PA) shall be coordinated with the heads of the OSD Component concerned.

(d) The General Counsel, DoD, shall:

(1) Coordinate with the Department of Justice (DoJ) on all OSD final denials of appeals for amending records, and review actions to confirm denial of access to records.

(2) Provide advice and assistance to the DASD(A) in the discharge of appellate and review responsibilities, and to the ASD(PA) on all access matters.

(3) Provide advice and assistance to OSD Components on legal matters pertaining to the Privacy Act of 1974.

(e) The Head of OSD Components shall:

(1) Designate an individual as the point of contact for Privacy Act matters; designate an official to deny initial requests for access to an individual's records or changes to records; and advise both DASD(A) and ASD(PA) of names of officials so designated.

(2) Report any new record system, or changes to an existing system, to the Records Administrator, ODASD(A), at least 90 days before the intended use of the system.

(3) Review all contracts that provide for maintaining records systems, by or on behalf of his or her office, to ensure within his or her authority, that language is included that provides that such systems shall be maintained in a manner consistent with the Privacy Act of 1974.

(4) Revise procurement guidance to ensure that any contract providing for the maintenance of a records system, by or on behalf of his or her office, includes language that ensures that such system will be maintained in accordance with the Privacy Act of 1974.

(5) Revise computer and telecommunications procurement policies to ensure that agencies review all proposed contracts for equipment and services to comply with the Privacy Act of 1974.

(6) Coordinate with Automatic Data Processing (ADP) and word processing managers providing services to ensure that an adequate risk analysis is conducted to comply with DoD 5400.11-R.

(7) Review all Directives that require forms or other methods used to collect information about individuals to ensure that the Privacy Act of 1974 is complied with.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11-R.

(9) Coordinate with the Office of the General Counsel (OGC) on all proposed denials of access to records.

(10) Provide justification to the ASD(PA) when access to a record is denied in whole or in part.

(11) Provide the record to the ASD(PA) when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, of who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11-R.

(14) Forward all requests for access to records received directly from an individual to the ASD(PA) for appropriate suspense control and recording.

(15) Provide ASD(PA) with a copy of the requested record when the request is granted.

(f) The Director for Space Management and Services (SM&S), WHS, shall:

Upon request of the OSD Records Administrator, provide the necessary automated services through the OSD support system for publishing of data in the Federal Register as required by the Privacy Act of 1974.

(g) The Requester is responsible for:

(1) Submitting a request for access to a record or information, in person or in writing, to the Directorate for Freedom of Information and Security Review, (DFOI/SR), OASD(PA), Room 2C757, Pentagon, Washington, D.C. 20301-1155. The Requester must also:

(i) Establish his or her identity as outlined in DoD 5400.11-R.

(ii) Describe the record sought, and provide sufficient information to enable the material to be located (e.g., identification of system or records, approximate date it was initiated, originating organization, and type of document).

(iii) Comply with procedures provided in DoD 5400.11-R for inspecting and/or obtaining copies of requested records.

(2) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

§ 286b.6 Procedures.

(a) *Publication of Notice in the* Federal Register. (1) A notice shall be published in the Federal Register of any record system meeting the definition of a system of records defined in DoD 5400.11-R.

(2) Regarding new or revised records systems, each OSD Component shall provide the DASD(A) with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the Office of Management and Budget (OBM) and to Congress at least 60 days before use and to the Federal Register at least 30 days before being put into use, in order to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD Regulation 5400.11-R.

(b) *Access to information on Records Systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11-R.

(2) There is no requirement under the Privacy Act of 1974 that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(4) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(5) Individuals shall not be denied access to a record in a system of

records pertaining to themselves because those records are exempted from disclosure under DoD 5400.7-R. This regulation states that "an exempted record shall be made available upon request of any individual when, in the judgment of the releasing Component or higher authority, no significant, legitimate, governmental purpose would be served by withholding it under an applicable exemption."

(6) Individuals shall not be denied access to their records for refusing to disclose their Social Security Numbers (SSNs), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(7) Any individual may request access to a record pertaining to him or her, in person or by mail, in accordance with the procedures outlined in paragraph (b)(8) of this section.

(8) Information necessary to identify a record is: the individual's name, date of birth, place of birth, identification of the records system as listed in the FEDERAL REGISTER, or sufficient information to identify the type of records being sought, and the approximate date the records might have been created. Any individual making a request for access to records in person shall come to the Directorate for Freedom of Information and Security Review, DFOI/SR, OASD(PA) Room 2C757, Pentagon, Washington, D.C. 20301-1155; and shall provide personal identification acceptable to the Director, DFOI/SR, to verify the individual's identity (e.g., driver's license, other licenses, permits, or passes used for routine identification purposes).

(9) If an individual wishes to be accompanied by a third party when seeking access to records or wishes to have the record released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(10) Any individual submitting a request by mail for access to information shall address such request to the Directorate for Freedom of Information and Security Review, OASD(PA), Pentagon, Room 2C757, Washington, D.C. 20301-1155. The request shall include a signed notarized statement to verify his or her identity or an alternate verification for individuals, such as military members overseas who do not have access to notary services.

(11) The following procedures shall apply to requests for access to investigatory records:

(i) Individuals requesting access to investigatory records pertaining to themselves and for law enforcement purposes are processed under DoD 5400.11-R or DoD 5400.7-R depending on which regulation gives them the greater degree of access.

(ii) Individual requests for access to investigatory records pertaining to themselves compiled for law enforcement purposes (and in the custody of law enforcement activities) that have been incorporated into the records system, exempted from the access provisions of DoD 5400.11-R, will be processed in accordance with Section B, Chapter 5, DoD 5400.11-R. Individuals shall not be denied access to records solely because they are in the exempt system, but they will have the same access that they would receive under DoD 5400.7-R. (Also see subsection A.10., Chapter 3, DoD 5400.11-R).

(iii) Requests by individuals for access to investigatory records pertaining to themselves that are in records systems exempted from access provisions will be processed under subsection C.1. of Chapter 5, DoD 5400.11-R or DoD 5400.7-R, depending upon which regulation gives the greater degree of access. (See also subsection A.10., Chapter 3, DoD 5400.11-R).

(iv) Individual requests for access to investigatory records exempted from access under Section B, Chapter 5, DoD 5400.11-R that are temporarily in the hands of a noninvestigatory element for adjudicative or personnel actions, will be referred to the originating investigating agency. The requester will be informed in writing of these referrals.

(12) The following procedures shall apply to requests for illegible, incomplete, or partially exempt records:

(i) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(ii) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(iii) When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that it will be understood by the requester.

(iv) The requester shall be informed of all deletions or changes to records.

(13) Medical records shall be disclosed to the individual they pertain to, unless a determination is made in consultation with a medical doctor, that the disclosure could have adverse effects on the individual's physical or mental health. Such information may be transmitted to a medical doctor named by the individual concerned.

(14) The individual may be charged reproduction fees for copies or records as outlined in DoD 5400.11 R.

(c) *Request to amend personal information in Records Systems and disputes.* (1) The Head of an OSD Component, or the designated official, shall allow individuals to request amendment to their records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests should be as brief and as simple as possible and should contain, as a minimum, identifying information to locate the record, a description of the items to be amended, and the reason for the change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(8) of this section to ensure that they are seeking to amend records pertaining to themselves, and not, inadvertently or intentionally, the records of others.

(2) The appropriate system manager shall mail a written acknowledgment to an individual's request to amend a record within 10 days after receipt, excluding Saturdays, Sundays, and legal public holidays. Such acknowledgment shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed, processed, and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend the records:

(i) If the OSD Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures and inform the requester of the action taken. The OSD Component official shall also notify all previous holders of the record that the amendment has been made, and shall explain the substance of the correction.

(ii) If he or she disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure established by OSD for an appeal as outlined in paragraph (c)(6) of this section.

(iii) If the request for an amendment pertains to a record controlled and maintained by another Federal agency, the request shall be referred to the appropriate agency, and the requester advised of this.

(4) The following procedures shall be used when reviewing records under dispute:

(i) In response to a request for an amendment to records, officials shall determine the accuracy, relevance, timeliness, or completeness of the requested record. The Head of an OSD Component, or designated official, shall develop tolerances for accuracy, relevance, and timeliness by giving consideration as to whether such tolerances could result in consequences adverse to the individual.

(ii) The Head of an OSD Component, or designated official, shall limit the review of a record to those items of information that clearly bear on any determination to amend the records and shall ensure that all those elements are present before determination is made.

(5) If the Head of an OSD Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of a record, he or she shall:

(i) Advise the individual of the denial and the reason for it.

(ii) Inform the individual that he or she may request a further review.

(iii) Describe the procedures for requesting such review including the name and address of the official to whom the request should be directed. The procedures should be as brief and simple as possible and should indicate where the individual can seek advice or assistance in obtaining such review.

(iv) Furnish a copy of the justification of any denial to amend a record to DASD(A).

(6) If an individual disagrees with the initial OSD determination, he or she may file a request for further review of the record. The request should be sent to the Deputy Assistant Secretary of Defense (Administration), Department of Defense, The Pentagon, Washington, DC 20301 1155, if the record is created and maintained by an OSD Component.

(7) If, after review, the DASD(A) further refuses to amend the record as requested, the DASD(A) shall advise the individual:

(i) Of the refusal and the reason for it.

(ii) Of his or her right to file a statement of the reason for disagreeing with the DASD(A)'s decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement at the discretion of the OSD Component, summarizing its reasons for refusing to amend the records.

(v) That prior recipients of copies of disputed records shall be provided a copy of any statement of dispute to the extent that an accounting of disclosure is maintained.

(vi) Of his or her right to seek judicial review of the DASD(A)'s refusal to amend a record.

(8) If, after the review, the DASD(A) determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(9) The final OSD determination on an individual's request for a review of the DASD(A)'s refusal to amend the record must be concluded within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. If the DASD(A) determines that a fair and equitable review cannot be made within that time, the individual will be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(d) *Disclosure of disputed information.* (1) After the DASD(A) has refused to amend a record and the individual has filed a statement under paragraph (c)(7) of this section, the OSD Component shall clearly annotate the record so that the proceeding is clear to any authorized person to whom the record is disclosed. The notation itself shall be integral to the record. Where an accounting of a disclosure has been made, the OSD Component shall advise previous recipients that the record has been disputed, and shall provide a copy of the individual's statement where requested.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is to be disclosed.

(ii) When information that is the subject of a statement of dispute is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3) of this section.

(e) *Penalties*—(1) *Civil action.* (i) An individual may file a civil suit against the United States for.

(A) Refusal to amend a record.

(B) Improper denial of the access to a record

(C) Failure to maintain a record accurately.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and lawyer's fees.

(iv) When the individual can show that personal damage was done because an OSD officer or employee failed to comply with the provisions of the Privacy Act of 1974, the United States may be assessed damages by the court at a minimum of $1,000.

(2) *Criminal action.* (i) Criminal penalties may be imposed against an OSD officer or employee for willful unauthorized disclosure of information in the records, for failure to publish a notice of the existence of a record system in the FEDERAL REGISTER, or for gaining access to the individual's record under false pretenses (i.e., against any person who knowingly and willfully requests or obtains any record concerning another individual without legal authorization).

(ii) An OSD officer or employee may be fined up to $5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation status sheet.* Whenever a complaint citing the Privacy Act of 1974 is filed in a U.S. District Court against the Department of Defense, a DoD Component, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.11 R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimumu, provide the information required by items 1 through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

§ 286b.7 Procedures for exemptions.

(a) *General information.* The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 286b.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions.* [Reserved]

(c) *Specific exemptions.* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, "National Security Information," dated June 28, 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under E.O. 11265, "National Security Information," dated June 28, 1979, as amended, and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD system of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(1) *SYSID-DWHS P26, SYSNAME*. Protective Services File. Exemption. This system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled for law enforcement purposes or a record maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of the material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k) (2) and (3).

Reasons. These exemptions are necessary to maintain the confidentiality of the records compiled for the purpose of law enforcement, or protecting the President of the United States or others pursuant to 18 U.S.C. 3056.

(2) *SYSID-DWHS P28, SYSNAME*. The Office of the Secretary of Defense Clearance File.

Exemption. This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This exemption is required to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) *SYSID-DGC 04, SYSNAME*. Industrial Personnel Security Clearance Case Files.

Exemption. All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This system of records is exempt from subsections (c)(3) and (d) of Section 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) *SYSID-DWHS P32. SYSNAME.* Standards of Conduct Inquiry File. Exemption. This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k) (2) and (5).

Reasons. These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability, eligibility or qualifications for Federal civilian employment, military service, or Federal contracts of those alleged to have violated or caused others to violate the Standards of Conduct regulations of the Department of Defense.

(5) *SYSID-DUSDP 02. SYSNAME.* Special Personnel Security Cases.

Exemption. All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

Authority: 5 U.S.C. 552a(k)(5).

Reasons. This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

SYSID DMRA&L 02.0. SYSNAME. Educator Application Files.

Exemption—All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

Authority—5 U.S.C. 552a(k)(5).

Reasons—It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information necessary to make determinations involving applicants suitability for DoDDS teaching positions.

§ 286b.8 Information requirements.

The Defense Privacy Office shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 5000.19.

PART 286c—OFFICE OF JOINT CHIEFS OF STAFF, PRIVACY ACT OF 1974

§ 286c.1 Source of regulations.

The Office of the Joint Chiefs of Staff is governed by the Privacy Act implementation regulations of the Office of the Secretary of Defense, 32 CFR Part 286b.

(Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a))

[40 FR 55535, Nov. 28, 1975]

PART 286d—DEFENSE ADVANCED RESEARCH PROJECTS AGENCY, PRIVACY ACT OF 1974

§ 286d.1 Source of regulations.

The Defense Advanced Research Projects Agency is governed by the Privacy Act implementation regulations of the Office of the Secretary of Defense, 32 CFR Part 286b.

(Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a))

[40 FR 55535, Nov. 28, 1975]

PART 286e—UNIFORMED SERVICES UNIVERSITY OF HEALTH SCIENCES, PRIVACY ACT OF 1974

§ 286e.1 Source of regulations.

The Uniformed Services University of the Health Sciences, is governed by the Privacy Act implementation regulations of the Office of the Secretary of Defense, 32 CFR Part 286b.

(Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a))

[40 FR 55535, Nov. 28, 1975]

PART 286f—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Sec.

286f.1 Purpose and applicability.
286f.2 Policy.
286f.3 Procedures.
286f.4 Reports.

AUTHORITY: Title XI, Pub. L. 95-630, 92 Stat. 3697 (12 U.S.C. 3401 et seq.).

SOURCE: 46 FR 830, Jan. 5, 1981, unless otherwise noted.

§ 286f.1 Purpose and applicability.

(a) This part establishes procedures for the National Security Agency/Central Security Service (NSA/CSS) to obtain records from financial institutions and implements 12 U.S.C. 3401-3422, 92 Stat. 3697 (Pub. L. 95-630).

(b) The provisions of this part apply only to financial records maintained by any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any district, state or territory of the United States.

(c) All NSA/CSS elements are subject to the provisions of this part.

§ 286f.2 Policy.

(a) Financial records shall be sought regarding any individual who is an applicant for employment with the NSA/CSS or who has a current security clearance and/or access granted by the NSA/CSS, and regarding any other individual assigned or detailed to the NSA/CSS when such records are relevant to a final determination with respect to employment, continued assignment or detail, clearance, access or other related actions.

(b) The NSA/CSS shall seek the consent of an individual when obtaining that individual's financial records from a financial institution. Refusal of an individual to provide such consent may be grounds for denying access to all Sensitive Compartmented Information (SCI) and to other classified information in NSA/CSS custody if the circumstances of such refusal or the nature of the records sought prevent the NSA/CSS from determining that such access is or would be clearly consistent with the national security.

(c) Any actions relative to obtaining financial records without an individual's consent shall be conducted in accordance with the provisions of DoD Directive 5400.12, found in 32 CFR Part 294, as appropriate.

§ 286f.3 Procedures.

(a) Representatives of NSA/CSS Security shall use a consent form as set out in Enclosure 2 of CFR Part 294, relative to obtaining financial records. A copy of the consent form shall be made a part of the individual's NSA/CSS security file, and an additional record copy of the form kept be security for the purpose of an annual report. A certification form as set out in Enclosure 4 of 32 CFR Part 294 shall be provided to financial institutions by security representatives along with the consent form certifying compliance with 12 U.S.C. 3401 *et seq.*

(b) Procedures used by security regarding matters referenced in paragraph (a) of this section, shall be established on a case-by-case basis and shall be in consonance with the appropriate provisions of 32 CFR Part 294.

(c) Financial records obtained under 12 U.S.C. 3401 *et seq.* shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. 3412." Except in accordance with paragraph (e) of this section such records shall not be transferred to another agency or department outside the Department of Defense unless the Chief, Security, or delegate certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained in the appropriate NSA/CSS security file with copies of the released records.

(d) Unless alternate procedures are involved as referenced in paragraph (b) of this section, when financial records have been transferred to another agency, a security representative shall, within 14 days, personally serve or mail to the individual whose records have been transferred, at his or her last known address, a copy of the certificate required by paragraph (c) of this section, and the following notice: "Copies of or information contained in your financial records lawfully in possession of the NSA/CSS have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purpose(s): (state reason). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(e) In cases where another federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities requests a financial record held by the NSA/CSS, and makes such a request for the purpose of conducting that Agency's protective functions, the NSA/CSS may release the information without notifying the individual to whom the financial record pertains.

§ 286f.4 Reports.

Security shall compile an annual report setting forth the data required in the Right to Financial Privacy Act of 1978. The report shall be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), by 15 February annually, and shall be assigned the Report Control Symbol DD-COMP(A) of 1538.

PART 286g—DEFENSE AUDIOVISUAL AGENCY IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.
286g.1 Authority.
286g.2 Purpose.
286g.3 Definitions.
286g.4 Information and procedures for requesting information.
286g.5 Requirements of identification.
286g.6 Access by subject individuals.
286g.7 Fees.
286g.8 Request for correction or amendment.

Sec.
286g.9 DAVA review of request for amendment.
286g.10 Appeal of intitial amendment decision.
286g.11 Disclosures of DAVA records to other than the subject.
286g.12 Penalties.
286g.13 Referral of records.
286g.14 General exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 48 FR 39917, Sept. 2, 1983, unless otherwise noted.

§ 286g.1 Authority.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the following rules of procedures are established with respect to access and amendment of records maintained by the Defense Audiovisual Agency (DAVA) by the individual subjects of the records. These procedures do not apply to current or former DAVA employees who request access to records pertaining to themselves through normal DAVA channels or by writing the Director, Defense Audiovisual Agency, HQ DAVA-D, Norton AFB, CA 92409.

§ 286g.2 Purpose.

(a) To promulgate rules providing procedures by which individuals may exercise their rights granted by the Act to: (1) Determine whether a DAVA system of records contains a record pertaining to themselves; (2) Be granted access to all or portions thereof; (3) Request administrative correction or amendment of such records; (4) Request an accounting of disclosures from such records; (5) Appeal any adverse determination for access or correction/amendment of records.

(b) To identify records subject to the provisions of these rules.

(c) To specify these systems of records for which the Director, Defense Audiovisual Agency, HQ DAVA-D, claims an exemption.

§ 286g.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Defense Audiovisual Agency.

§ 286g.4 Information and procedures for requesting information.

(a) The following is a list of all systems of records maintained by DAVA.

Number	Title
102-01	DAVA Office General Personnel Files
102-03	DAVA Office Personnel Locator Files
102-10	DAVA Temporary Duty Travel Files
205-03	DAVA Organizational History Files
209-01	DAVA Privacy Act Case Files, FOIA Requests and Mandatory Declassification Review Files
402-03	DAVA High-Level Inquiries Correspondence Files
403-09	DAVA Biography Files
501-03	DAVA Security Files
509-03	DAVA Expert and Consultant Data Files
613-02	DAVA Appeal and Grievance Files

(b) Individuals should submit inquiries regarding all DAVA files by mail to: Headquarters Defense Audiovisual Agency, HQ DAVA-RAH, Norton AFB, CA 92409, or to the Activity Chief of the DAVA Activity (see list below) thought to maintain the record in question. Inquiries in person may be made Monday through Friday from 9:00 a.m. to 3:00 p.m. at the Headquarters or the DAVA Activities. All personal visits will require proper identification.

(c) DAVA Activities Address List:

(1) Defense Audiovisual Agency—Norton Activity, Norton AFB, CA 92409
(2) Defense Audiovisual Agency—Tobyhanna Activity, Tobyhanna, PA 18466
(3) Defense Audiovisual Agency—Washington, Activity, Bldg. 219, Washington Navy Yard, Washington, D.C. 20374

§ 286g.5 Requirements of identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name; maiden name or alias, if appropriate; date and place of birth; and Social Security Number. Where requests are made by mail, the requester's signature must be notarized. Inclusion of telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph such as a driver's license, military identification card, building pass, etc

§ 286g.6 Access by subject individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil or criminal actions or proceedings, or otherwise exempt under § 286g.14 below. Requests for pending investigations will be held in abeyance until completion of the investigation and all completion of the subsequent civil or criminal proceedings or actions.

(b) Any individual may authorize DAVA to provide a copy of his/her records to a third party. This authorization must be in writing and should be provided DAVA with the initial request.

§ 286g.7 Fees.

Requesters will be charged only for the reproduction of requested documents and postal charges, if applicable. Normally there will be no charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD directives and regulations.

§ 286g.8 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager of the file. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: Accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provides a basis for evaluating the request. Normally, all documents submitted, to include court orders, should be certified.

(b) Requirements of identification as outlined in section 5 apply to requests to correct or amend a file.

(c) Incomplete requests will not be honored, but the requester will be contacted for the additional information needed to process the request.

(d) The alteration of evidence presented to courts, boards, and other official proceedings is not permitted by this section.

§ 286g.9 DAVA review of request for amendment.

(a) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgment.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies, or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible DAVA official. Where a DoD recipient of an investigative record cannot be located, the notification will be sent to the personnel security element of the component to which the file was furnished.

(c) Where there is a determination to deny all or a portion of a request to amend a record, DAVA will promptly advise the requesting individual of the specifics of the refusal and the reasons and inform the individual the he/she may request a review of the denial(s) from the Director, DAVA, within 45 days of the denial.

§ 286g.10 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Director, Defense Audiovisual Agency, HQ DAVA-D, Norton AFB, CA 92409. The appeal should be concise and should specify the reasons the requester feels that the initial amendment action by DAVA was not satisfactory. Upon receipt of the appeal, the Director, DAVA, will review the request and make a determination to approve or deny the appeal.

(b) If the Director, DAVA, decides to amend the record, the requester, and all previous recipients of the disputed information, will be notified of the amendment. If the appeal is denied, DAVA will notify the requester of the reason for the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a Federal District Court to contest the decision not to amend the record.

(c) The DAVA will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion, if the 30-day limit cannot be met.

§ 286g.11 Disclosures of DAVA records to other than the subject.

(a) No record containing personally indentifiable information within a DAVA system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD Directive 5400.11.

(b) Disclosures that may be made without the request or consent of the individual are enumerated at 5 U.S.C. 552a(b) and in DoD Directive 5400.11.

§ 286g.12 Penalties.

(a) An individual may bring a civil action against the DAVA to correct or amend the record, where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness, and completeness, so as to guarantee fairness, or where there is failure to comply with any other provison of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the DAVA from withholding the records and order the distribution of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DAVA who discloses material, who knows it is prohibited from disclosure or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any records concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed $5,000.

§ 286g.13 Referral of records.

A DAVA system of records may contain records which originated with other DoD Components or Federal Agencies who may have claimed exemptions for them under the Privacy Act of 1974. When any action is initiated on a portion of records which may be exempt, consultation with the originating agency or component will be effected and, where appropriate, such records will be referred to that component or agency for action.

§ 286g.14 General exemptions.

All systems of records maintained by the DAVA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that such systems contain any information properly classified under Executive Order 11652, 3 CFR Part 339, and which is required by the said Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

PART 287—AVAILABILITY TO THE PUBLIC OF DEFENSE COMMUNICATIONS AGENCY INFORMATION

Sec.
287.1 Purpose.
287.2 Applicability.
287.3 Authority.
287.4 Responsibilities.
287.5 Fees.
287.6 Reports.

Sec.
287.7 Questions.
287.8 "For Official Use Only" records.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502.

SOURCE: 40 FR 16203, Apr. 10, 1975, unless otherwise noted.

§ 287.1 Purpose.

This part delineates responsibility for making available to the public the maximum amount of information concerning the operations and activities of the Defense Communications Agency (DCA).

§ 287.2 Applicability.

This part is applicable to Headquarters, DCA and DCA field activities.

§ 287.3 Authority.

This part is published in accordance with the authority contained in 40 FR 8190, 26 February 1975, and 40 FR 4911, 3 February 1975.

§ 287.4 Responsibilities.

(a) The Assistant to the Director for Administration, Headquarters, DCA will:

(1) Prepare in proper format and arrange for publication in the FEDERAL REGISTER the necessary regulations to implement Title 5, United States Code, section 552, as amended by Pub. L. 93-502 (Freedom of Information Act), subject to the provisions contained in 32 CFR 286.8.

(2) Make the material described in 32 CFR 286.5 and 286.6 available for public inspection and copying at Headquarters, DCA, 8th Street South and South Courthouse Road, Arlington, Virginia. A current index of this material will be maintained in accordance with the appropriate provisions of 32 CFR Part 286.

(3) Establish programs of instruction on the provisions and requirements of 32 CFR 286.7 for all officials and employees who contribute to DCA's implementation of the Freedom of Information Act.

(4) Be responsible for arranging for the publication in the FEDERAL REGISTER, after coordinating with the DCA Counsel, of appropriate material setting forth where, how, and by what authority DCA performs its functions and for informing all interested persons how to deal effectively with the Agency. These publications will be made in accordance with the guidelines contained in 40 CFR Part 296.

(b) The Deputy Directors, the Comptroller, and the Chief of Staff, DCA will, subject to the exceptions set forth in 32 CFR Part 286:

(1) Furnish the Assistant to the Director for Administration with copies of the material, described in 32 CFR 286.5 and 286.6 that is to be published in the FEDERAL REGISTER.

(2) Furnish the Civilian Assistant to the Chief of Staff, when requested, with DCA documentary material, which qualifies as a record in accordance with 32 CFR 286.5, for the purpose of responding to private persons. All such requests for information will be referred to the Civilian Assistant to the Chief of Staff.

(c) The Director, DCEC and the Commanders and Chiefs of other DCA field activities will:

(1) Provide the Assistant to the Director for Administration and the Civilian Assistant to the Chief of Staff, as appropriate, with material described in 32 CFR 286.5 and 286.6.

(2) Release records upon their own authority and concurrently provide a copy of the records released to Headquarters, DCA, Code 104.

(3) Develop supplemental instructions to DCAI 210-225-1, as required, to cover requests for information from the public which are received on a regular basis and which usually pertain to information that may be released without question. Supplemental instructions will be submitted to DCA, Code 105, for review and approval prior to implementation.

(d) The Civilian Assistant to the Chief of Staff, Headquarters, DCA, is vested with the authority, within DCA, to release records for all requests coming to Headquarters, DCA, and to the field activities in the Metropolitan Washington area, and will:

(1) Respond to all requests for records from private persons in accordance with the provisions of 32 CFR 286.4 whether the requests are received directly by Headquarters, DCA or referred to the Headquarters, DCA by DCA field activities. Coordinate

such release with the Counsel in any case in which release is, or may be, controversial.

(2) Be the DCA principal point of contact and coordination with the ASD(PA).

(3) Insure the cooperation of DCA with the ASD(PA) in fulfilling his responsibility for monitoring the implementation of 32 CFR 286.7.

(4) Refer cases of significance to the ASD(PA) for review and evaluation, after coordination with Counsel and with the approval of the Chief of Staff, when the issues raised are unusual or precedent setting or otherwise require special attention or guidance.

(5) Advise the ASD(PA) prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record and when circumstances suggest a potential public controversy.

(6) Be responsible for the annual reporting requirement contained in 32 CFR 286.7.

(e) Within DCA, the sole authority to deny, in whole or in part, a request for records is vested in the DCA Counsel (Code 105) or, in his absence, in the Deputy Counsel. A denial by the DCA Counsel is appealable solely to the Director or to the Vice Director acting in the absence of the Director. The Counsel, DCA, will:

(1) Make the decision, whenever a request for a record is to be denied in whole or in part, in accordance with the criteria provided in 32 CFR Part 286.

(2) Inform, in writing, the person denied a record as to the basis for the denial of the request, and advise him of his right to appeal the decision to the Director, DCA.

(3) Ensure, that if such an appeal is taken, that the basis for the determination by the Director, DCA to refuse to release the record will be in writing, will state the reasons for the denial, and will inform the requester of his right to a judicial review in the appropriate U.S. district court; or if the denial is based upon security classification, of the requester's optional right to seek declassification of the record by the Interagency Classification Review Committee in lieu of immediate judicial review. No final refusal shall be made without prior consultation with the Office of the General Counsel of the Department of Defense when there is reason to believe that the requester will file a complaint in the U.S. district court to force release of the refused record.

(f) The Chief of Staff, Headquarters, DCA will, on behalf of the Director, DCA, respond to the corrective action recommended by the Civil Service Commission for arbitrary or capricious withholding of records, requested, pursuant to the Freedom of Information Act, by officers or employees of DCA. This action will be coordinated with the Counsel, DCA.

§ 287.5 Fees.

Fees which may be charged to the requester are contained in 32 CFR 286.5 and 286.10. Exceptions to charging fees are as follows: if the total fee would be less than $3; if the record is not located; if the record is determined to be exempt from disclosure; if the requester is engaged in a nonprofit activity designed for public health, safety, or welfare; if the requester is a representative of a State or local government or of a nonprofit group considered as primarily benefiting the general public. Fees ordinarily will be collected in advance of rendering the service unless the requester has specifically stated that whatever cost is involved is acceptable to him. Collection of schedule fees will be deposited to Miscellaneous Receipts of the Treasury.

§ 287.6 Reports.

Each major staff element and field activity on the distribution list of this DCA Instruction will furnish an annual report to Headquarters, DCA, Code 104, on or before 15 January of each year (Reports Control Symbol DD-PA(A) 1365) which will contain that information requested in 32 CFR 286.15.

§ 287.7 Questions.

Questions on both the substance and procedures of the Freedom of Information Act and the DCA implementation thereof should be addressed to the DCA Counsel by the most expeditious means possible, including telephone calls.

§ 287.8 "For Official Use Only" records.

The designation of "For Official Use Only" will be applied to documents and other material only as authorized by 32 CFR 286.1.

PART 287a—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

Sec.

287a.1 Purpose.
287a.2 Applicability.
287a.3 Authority.
287a.4 Definitions.
287a.5 Policy.
287a.6 Procedures and responsibilities.
287a.7 Questions.
287a.8 Exemptions.

AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 40 FR 55535, Nov. 28, 1975, unless otherwise noted.

§ 287a.1 Purpose.

This part delineates responsibility and provides guidance for the implementation of Pub. L. 93-579 (Privacy Act of 1974).

§ 287a.2 Applicability.

This part applies to Headquarters, DCA and DCA field activities.

§ 287a.3 Authority.

This part is published in accordance with the authority contained in 32 CFR Part 286a, August 1975.

§ 287a.4 Definitions.

Add to the definitions contained in 32 CFR 286a.6 the following:

System Manager: The DCA official who is responsible for policies and procedures governing a DCA System of Record. His title and duty address will be found in the paragraph entitled Sysmanager in DCA's Record System Notices which are published in the FEDERAL REGISTER in compliance with provisions of the Privacy Act of 1974.

§ 287a.5 Policy.

It is the policy of DCA: (a) To preserve the personal privacy of individuals, to permit an individual to know what records exist pertaining to him in the DCA, and to have access to and have a copy made of all or any portion of such records and to correct or amend such records.

(b) To collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

§ 287a.6 Procedures and responsibilities.

(a) The Counsel, DCA, is hereby designated the Privacy Act Officer for DCA and is responsible for insuring that an internal DCA Privacy Program is established and maintained. He will also insure that all echelons of DCA effectively comply with and implement 32 CFR Part 286a.

(b) The Civilian Assistant to the Chief of Staff will be responsible for the annual reporting requirements contained in 32 CFR 286a.5.

(c) DCA System Managers and other appropriate DCA officials will:

(1) Insure compliance with the provisions of 32 CFR 286a.9.

(2) Comply with the provisions of 32 CFR 286a.11. In this area the Assistant to the Director for Administration will provide assistance.

(3) Adhere to the following:

(i) Within DCA, the System Manager of any record system will assure that records pertaining to an individual will be disclosed, upon request, to the individual to whom the record pertains. The individual need not state a reason or otherwise justify the need to gain access. A person of the individual's choosing may accompany the individual when the record is disclosed. The System Manager may require the individual to furnish a written statement authorizing discussion of the individual's records in the presence of the accompanying person. If requested, the System Manager will have a copy made of all or any portion of the record pertaining to the individual in a form comprehensible to the requester.

(ii) The System Manager may release records to the individual's representative who has the written consent of the individual. The System Manager will require reasonable identification of individuals to assure that records are disclosed to the proper person. No verification of identity will be required of an individual seeking access to records which are otherwise available to any member of the public under the Freedom of Information Act. Identification requirements should be consistent with the nature of the records being disclosed. For disclosure of records to an individual in person, the System Manager will require that the individual show some form of identification. For records disclosed to an individual in person or by mail, the System Manager may require whatever identifying information is needed to locate the record; i.e., name, social security number, date of birth. If the sensitivity of the data warrants, the System Manager may require a signed notarized statement of identity. The System Manager may compare the signatures of the requester with those in the records to verify identity. An individual will not be denied access to his record for refusing to disclose his social security number unless disclosure is required by statute or by regulation adopted before 1 January 1975. An individual will not be denied access to records pertaining to him because the records are exempted from disclosure under the provisions of the Freedom of Information Act.

(iii) The System Manager will not deny access to a record or a copy thereof to an individual solely because its physical presence is not readily available (i.e. on magnetic tape) or because the context of the record may disclose sensitive information about another individual. To protect the personal privacy of other individuals who may be identified in a record, the System Manager shall prepare an extract to delete only that information which would not be releasable to the requesting individual under the Freedom of Information Act.

(iv) When the System Manager is of the opinion that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the System Manager will promptly request the individual to submit the name and address of a doctor who will determine whether the medical record may be disclosed directly to the individual. The System Manager will then request the opinion of the doctor named by the individual on whether a medical record may be disclosed to the individual. The System Manager shall disclose the medical record to the individual to whom it pertains unless, in the judgment of the doctor, access to the record could have an adverse effect upon the individual's physical or mental health. In this event the System Manager will transmit the record to the doctor and immediately inform the individual.

(v) The fees to be charged, if any, to an individual for making copies of his record, excluding the cost of any search for and review of the record, will be in accordance with the "Schedule of Fees" as set forth in 32 CFR 286.5 and 286.10.

(vi) The System Manager of the record will permit an individual to request amendment of a record pertaining to the individual. Requests to amend records shall be in person or in writing and shall be submitted to the System Manager who maintains the records. Such requests should contain as a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change.

(vii) The System Manager will provide a written acknowledgment of the receipt of a request to amend a record to the individual who requested the amendment within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request. Such an acknowledgment may, if necessary, request any additional information needed to make a determination. No acknowledgment is required if the request can be reviewed and processed and the individual notified of compliance or denial within the 10 day period.

(viii) The System Manager will promptly take one of the following actions on requests to amend records:

(A) Refer the request to the agency or office that has control of and maintains the record in those instances where the record requested remains the property of the controlling office or agency.

(B) In accordance with existing statute, regulation, or administrative procedure, make any correction of any portion thereof which the individual believes is not accurate, relevant, timely or complete, or

(C) Inform the individual of the System Manager's refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the individual's right to request a review of the refusal by the Director, DCA, through the DCA Privacy Act Board.

(ix) The DCA Privacy Act Board will be comprised of the DCA Counsel, as Chairman; the Assistant to the Director for Administration, and the Assistant to the Director for Personnel; or in their absence, their authorized representatives. The individual who disagrees with the refusal of the System Manager to amend his record may request a review of this refusal by the DCA Privacy Act Board. The request for the review may be made orally or in writing and shall be made to the System Manager. The System Manager will promptly forward the request for review to the Chairman of the Board to make a proper review. The Board will promptly review the matter. If, after review, the Board is unanimous in its decision that the record be amended in accordance with the request of the individual then the Chairman of the Board shall so notify the System Manager. The System Manager will immediately make the necessary corrections to the record and will promptly notify the individual. The System Manager will, if an accounting of disclosure of the record has been made, advise all previous recipients of the record, which was corrected, of the correction and its substance. This will be done in all instances when a record is amended. If, after review, the Board decides that the request for amendment should be denied, it will promptly forward its recommendation to the Director, DCA. A majority vote of the members of the Board will constitute a recommendation to the Director.

(x) The Director, DCA, upon receipt of the Board's recommendation, will complete the review and make a final determination.

(xi) If the Director, DCA, after his review, agrees with the individual's request to amend the record, he will, through the DCA Counsel, so advise the individual in writing. The System Manager will receive a copy of the Director's decision and will assure that the record is corrected accordingly and that if an accounting of disclosure of the record has been made, advise all previous recipients of the record which was corrected of the correction, and its substance.

(xii) If, after his review, the Director refuses to amend the record as the individual requested, he will, through the DCA Counsel, advise the individual of his refusal and the reasons for it; of the individual's right to file a concise statement setting forth the reasons for the individual's disagreement with the decision of the Director, DCA; that the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Agency, a brief statement by the Agency summarizing its reasons for refusing to amend the record; that prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and of the individual's right to seek judicial review of the Agency's refusal to amend a record.

(xiii) The Director's final determination on the individual's request for a review of the System Manager's initial refusal to amend the record must be concluded within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requested such review unless the Director determines that a fair and equitable review cannot be made within that time. If additional time is required, the individual will be informed in writing of reasons for the delay and of the approximate date on which the review is expected to be completed.

(xiv) After the Director, DCA has refused to amend a record and the individual has filed a statement setting forth the reasons for the individual's disagreement with the decision of the Director, the System Manager will clearly note any portion of the record which is disputed. The System Manager's notation should make clear that the record is disputed and this should be apparent to anyone who may subsequently have access to, use, or disclose the record. When the System Manager has previously disclosed or will subsequently disclose that portion of the record which is disputed he will note that that portion of the record is disputed and will provide the recipients of the record with a copy of the individual's statement setting forth the reasons for the individual's disagreement with the decision of the Director not to amend the record. The System Manager will also provide recipients of the disputed record with a brief summary of the Director's reasons for not making the requested amendments to the record.

(xv) Nothing herein shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(xvi) Any requests by an individual for access to or copies of his records shall be processed in accordance with this part and 32 CFR Part 286a.

(d) DCA System Managers will be:

(1) Responsible for complying with the provisions contained in 32 CFR 286a.8 relating to the disclosure to others of personal records, obtaining the written consent of individuals to whom the record pertains, and for keeping an accurate accounting of each disclosure of a record.

(2) Responsible for providing to the Civilian Assistant to the Chief of Staff the information requested in 32 CFR 286a.5. However, the information will be reported on a quarterly basis with the first report due to the Civilian Assistant to the Chief of Staff by 31 December 1975.

(e) The Assistant to the Director for Administration, Headquarters, DCA will:

(1) Be responsible for furnishing written guidelines to assist System Managers and other DCA officials in evaluating and implementing paperwork management procedures required under the Privacy Act of 1974. In this regard it should be noted that the Act establishes a number of requirements. Among these are the requirements:

(i) To disclose records contained in a system of records only under conditions specified in the law, (ii) to maintain an accounting of such disclosures, (iii) to establish procedures for the disclosure to an individual of his record or information pertaining to him, (iv) for reviewing a request concerning the amendment of such record, and (v) for permitting individuals to file a statement of disagreement which will be forwarded with subsequent disclosures. The guidelines will cover those portions of the Privacy Act which requires paperwork systems for implementation. In preparing those guidelines the Assistant to the Director for Administration will make use of the "Records Management System for Implementing the Privacy Act" as provided by the GSA National Archives and Records Service, Office of Records Management. The GSA procedures and guidelines will be adapted and modified as required to meet DCA needs.

(2) Be responsible for providing the "Forms" which are required to comply with 32 CFR 286a.9(b).

(f) The Assistant to the Director for Personnel, Headquarters, DCA will:

(1) Be responsible for development, within DCA, of an appropriate training program for all DCA personnel whose duties involve responsibilities for systems of records affected by the Privacy Act.

(2) Assure that DCA personnel involved in the design, development, operation, or maintenance of any system of records, as defined in 32 CFR 286a.6 are informed of all requirements to protect the privacy of the individuals who are subjects of the records. The criminal penalties and civil suit aspects of the Privacy Act will be emphasized.

(3) Assure that within DCA administrative and physical safeguards are es-

tablished to protect information from unauthorized or unintentional access, disclosure, modification or destruction and to insure that all persons whose official duties require access to or processing and maintenance of personal information are trained in the proper safeguarding and use of such information.

§ 287a.7 Questions.

Questions on both the substance and procedure of the Privacy Act and the DCA implementation thereof should be addressed to the DCA Counsel by the most expeditious means possible, including telephone calls.

§ 287a.8 Exemptions.

Section 5 U.S.C. 552a (3)(j) and (3)(k) authorize an agency head to exempt certain systems of records or parts of certain systems of records from some of the requirements of the act. This part reserves to the Director, DCA, as head of an agency, the right to create exemptions pursuant to the exemption provisions of the act. All systems of records maintained by DCA shall be exempt from the requirements of 5 U.S.C. 552a (d) pursuant to 5 U.S.C. 552a(3)(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972 (37 FR 10053, May 19, 1972) and which is required by the executive order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified.

[42 FR 20298, Apr. 19, 1977]

PART 288—USER CHARGES

Sec.
288.1 Reissuance and purpose.
288.2 Applicability.
288.3 Definitions.
288.4 Policy.
288.5 Responsibilities.
288.6 Charges and fees.
288.7 Collections.
288.8 Legislative proposals.
288.9 Examples of benefits not to be charged under § 288.4(c) of this part.
288.10 Schedule of fees and rates.

Authority: 31 U.S.C. 483a; Title V, Pub. L. 137, 65 Stat. 290.

Source: 51 FR 16024, Apr. 23, 1986, unless otherwise noted.

§ 288.1 Reissuance and purpose.

This part reissues 32 CFR Part 288 and implements the DoD program under 31 U.S.C. 9701, and OMB Circular A-25 for establishing appropriate charges for authorized services provided by DoD organizations.

§ 288.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). None of the provisions in this part should be construed as providing authority for the sale or lease of property, or the rendering of special services. Actions to convey such special benefits must be authorized by separate authority. The user charge policy is applicable except when other statutes or directives specifically direct other practices or procedures.

§ 288.3 Definitions.

Recipient. One who requests or receives the benefits of the service(s) provided.

§ 288.4 Policy.

(a) *General.* It is DoD policy not to compete with available commercial facilities (see 32 CFR Part 169a) in providing special services or in the sale or lease of property to private parties and agencies outside the Federal Government. However, when a service or sale is made that conveys special benefits to recipients, above and beyond those accruing to the public at large, a reasonable charge shall be made to each identifiable recipient, except as otherwise authorized by the Secretary of Defense. A special benefit will be considered to accrue, and a charge shall be imposed when the service rendered:

(1) Enables the recipient to obtain more immediate or substantial gain or values (which may or may not be measureable in monetary terms) than those which accrue to the general public; or

(2) Is performed at the request of the recipient and is above and beyond the services regularly received by or available without charge to the general public.

(b) *Costing.* (1) A charge shall be imposed to recover the full cost to the Federal Government of rendering a service or the fair market value of such service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be made based on recovery of full costs to the Federal Government.

(2) When federally owned resources or property are leased or sold, a fair market value shall be obtained. Fair market value shall be determined by the application of sound business management principles and, so far as practicable and feasible, in accordance with comparable commercial practices. Charges based on fair market value need not be limited to the recovery of costs; they may produce net revenues to the Government.

(c) *Exclusions and exceptions.* (1) The provisions of this part do not apply when other statutes or directives require different practices or procedures such as for:

(i) Morale, welfare, and recreation services to military personnel and civilian employees of the Department of Defense and other services provided in accordance with § 288.9.

(ii) Sale or disposal of surplus property under approved programs (See DoD Instruction 7310.1 [1]).

(iii) Services furnished the general public relating to, or in furtherance of, the U.S. Armed Forces recruiting program.

(iv) Services furnished to representatives of the public information media in the interest of public understanding of the U.S. Armed Forces.

(v) U.S. Armed Forces participation in public events. Charges for such participation are governed by the provisions of 32 CFR Part 238.

(vi) Records made available to the public, under the Freedom of Information Act, pursuant to 32 CFR Part 286. Charges for such record searches and copies of records are governed by § 286.61.

(vii) Services furnished to non-Federal audio-visual media. Charges for such services are governed by the provisions of DoD Instruction 5410.15.[2]

(viii) Government-developed computer programs released to non-Federal customers. Charges for software packages are governed by DoD Instruction 7930.2.[2]

(ix) Pricing of performance by industrial fund activities which shall be in accordance with DoD Directive 7410.4.[2]

(2) Charges may be waived or reduced when:

(i) The recipient of the benefits is engaged in nonprofit activity designed for public safety, health, or welfare.

(ii) Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the program.

(iii) Furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(iv) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

§ 288.5 Responsibilities.

Head of DoD Components, or designees, shall:

(a) Identify each service or activity covered by this part.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Code 301, 5801 Tabor Avenue, Philadelphia, Pa 19120.

[2] See footnote 1 to § 288.4(c)(1)(ii).

(b) Determine the extent of the special benefit provided.

(c) Determine applicable cost and fair market value.

(d) Establish appropriate charges and collect from recipients of special services.

(e) Grant cost waivers or reductions consistent with guidance in this part.

(f) Recommend to the Assistant Secretary of Defense (Comptroller) necessary additions and revisions to § 288.10.

§ 288.6 Charges and fees.

(a) *General.* (1) All charges and fees shall be based on total cost to the U.S. Government or fair market value, whichever is higher. Total cost shall be based on actual cost or replacement cost when property is to be replaced and expense data accumulated in accordance with DoD 7220.9-M.[5] Estimates from the best available records may be used if actual cost or expense data is not available.

(2) Cost accounting systems shall not be established solely for the purpose of determining charges, but the results of existing cost accounting systems shall be used. Total cost shall include all direct and indirect costs (see Chapter 71, DoD 7220.9-M).

(3) Charges and fees established in advance must be projected to the midpoint of the future period. Projected amounts shall be reviewed annually or whenever significant changes in cost or value occur.

(4) Internal management controls (see DoD Directive 5010.38[6] must be established to ensure that charges and fees are developed and adjusted, using current, accurate, and complete data, to provide reimbursement conforming to statutory requirements. Such controls also must ensure compliance with cash management and debt collection policies (see DoD Directive 7045.13[7]).

(b) *Services*—(1) *Basic requirements.* The maximum charge for a special service shall be governed by its total cost or fair market value, whichever is higher, and not by the value of the service, to the recipient. The computation shall include the direct and indirect costs to the Government of carrying out the activity. Typically, a service may involve the following:

(i) Civilian salaries or wages, including the full cost of benefits, such as leave, retirement, and medical and life insurance.

(ii) The full cost of military personnel services, including retirement, other personnel support, leave, and permanent change of station factors.

(iii) The cost of materials, supplies, travel expenses, communications, utilities, equipment and property rental, and maintenance of property and equipment.

(iv) Depreciation expense and interest of investment (currently at a 10 percent annual rate) (OMB Circular No. A-94) in DoD-owned, fixed assets.

(v) Other operational, administrative, and accessorial (DoD Instruction 7510.4[8] costs incurred by the activity while estabishing standards and regulations and research in support of the service performed, for example.

(2) *Fees and rates.* Fees and rates shall be based on actual costs. The charges for services provided by data processing activities shall be determined by using the costs accumulated pursuant to OMB Circular No. A-121 and Federal Government accounting Pamphlet No. 4 requirements. Fees and rates for recurring services shall be established in advance, when feasible. Recurring services include, but are not limited to, copying, certifying, and researching records, except when those services are excluded or exempted from charges under § 228.4(c) or § 228.9.

(3) *DoD-wide fees and rates.* Section 228.10 provides a schedule of fees and rates for certain services for use throughout the Department of Defense. Recommendations for additions and revisions to the schedule will be made to the Assistant Secretary of Defense (Comptroller).

(c) *Lease or sale of property.* Charges for lease or slae of property shall be based on a determination of fair market value.

---

[5] See footnote 1 to § 288.4(c)(1)(ii).

[8] See footnote 1 to § 228.4(a).

(1) In cases involving the lease or rental of military equipment, when there is no commercial counterpart, fair market value will be based on the computation of an annual rent which will be the sum of the annual depreciation plus interest on investment. The amount of interest on investment is determined by applying the interest rate to the net book value; that is, acquisition cost plus additions less depreciation. The current interest rate in OMB Circular No A-94 shall be used. Support, if furnished, and applicable general administration expenses will be extra. In determining the value, consideration may be given to the responsibility of the lessee to assume the risk of loss or damage to the property and to hold the Government harmless against claims or liabilities by the lessee or third parties.

(2) In cases involving the sale of property when there is no known fair market value, costs shall be based on the total of the standard price of the item carried in inventory, or the reduced price when so authorized for sale within the Department of Defense and the accessorial and administrative costs computed under DoD Instruction 7510.4.

§ 288.7 Collections.

(a) Collections of charges and fees shall be made in advance of rendering the service, except when preservation of life or property is involved, performance is authorized by law without advance payment, or advance payment is impractical because multiple requests for services are received on a continuing basis from a reliable requester (i.e., consistently prompt payments for services received). When an advance collection exception is approved, an accounts receivable will be established to control collections. The policies in DoD 7220.9-M, DoD Directive 5010.38, and DoD Directive 7045.13 shall be used in accounting, controlling, and managing cash and debt collections.

(1) Collections of fees and charges normally will be deposited to Miscellanous Receipts of the Treasury unless otherwise authorized by law or regulation.

(2) Collections for utilities and services in connection with the lease of property will be deposited to the appropriation or fund responsible for financing the operations of the equipment or facility.

§ 288.8 Legislative proposals.

In cases where collections of fees and charges for services or property are limited or restricted by provisions of existing law, the DoD Component(s) concerned will submit appropriate remedial legislative proposals under applicable legislative procedures. (See DoD Instruction 5500.4.)

§ 288.9 Examples of benefits not to be charged under provisions of § 288.4(c)(1) of this part.

(a) Services requested by members of the U.S. Armed Forces in their capacity as Service members.

(b) Services requested by members of the U.S. Armed Forces who are in a casualty status, or requested by their next of kin or legal representative, or requested by any source, when it relates to a casualty.

(c) The address of record of a member or former member of the U.S. Armed Forces when the address is available readily through a directory (locator) service, and when the address is requested by a member of the U.S. Armed Forces or by a relative or a legal representative of a member of the U.S. Armed Forces or when the address of record is requested by any source for the purpose of paying monies or forwarding property to a member or former member of the U.S. Armed Forces.

(d) Services requested by or on behalf of a member or former member of the U.S. Armed Forces or, if deceased, his or her next of kin or legal representative that pertain to the following:

(1) Information required to obtain financial benefits regardless of the terms of separation from the Service.

(2) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions, except as

---

See footnote 1 to § 288.4(c)(1)(ii).

provided in paragraphs (1) and (2) of this section.

(3) Information relating to a decoration or award or required for memorilization purposes.

(4) Review or change in type of discharge or correction of records.

(5) Personal documents, such as birth certificates, when such documents are required to be furnished by the member.

(e) Services that are furnished free in accordance with statutes or executive orders.

(f) Information from or copies of medical and dental records or X-ray films of patients or former patients of military medical or dental facilities, when such information is required and requests for such data are (1) submitted by an accredited medical facility, physician, or dentist, or (2) requested by the patient, his or her next of kin, or legal representative.

(g) Services involving confirmation of employment, disciplinary or other records, and salaries of active or separated civilian or military personnel, when requested by prospective employers or recognized sources of inquiry for credit or financial purposes.

(h) Services requested by and furnished to a Member of Congress for official use.

(i) Services requested by state, territorial, county, or municipal government, or an agency thereof, that is performing a function related to or furthering of a DoD objective.

(j) Services requested by a court, when the service will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(k) Services requested by a nonprofit organization that is performing a function related to or furthering an objective of the Federal Government or that is in the interest of public health and welfare, including education.

(l) Services requested by an individual or corporation that is performing a function related to or furthering an objective of the Federal Government, when the cost of such services would be chargeable to a Federal Government contract or grant held by the individual or corporation.

(m) Services requested by donors with respect to their gifts.

(n) Requests for occasional and incidental services (including requests from residents of foreign countries), that are not requested often, when it is determined administratively that a fee would be inappropriate for the occasional and incidental services.

(o) Requests from Federal employees for the completion of claims for reimbursement under the Federal Employees Health Benefit Act of 1959.

(p) Administrative services provided by reference or reading rooms to inspect public records, excluding copies of records or documents furnished.

(q) Requests for military locator service by financial organizations that are located on DoD installations.

(r) Requests for military locator service by financial organizations that are engaged in the direct deposit program and that are not located on DoD installations. Requests for an address of record shall include the following:

(1) A statement that the financial organization is listed as a direct deposit recipient in the current U.S. Treasury Bureau of Accounts, "Financial Organizations Directory."

(2) A statement that the individual, whose address is being requested, has his or her pay forwarded as a direct deposit by a DoD disbursing officer.

(3) The individual's financial organization's account number.

(s) Services rendered in response to requests for classification review of DoD classified records, submitted under Executive Order 12065 and implemented by 32 CFR Part 159. Such services consist of the work performed in conducting the classification review or in granting and completing an appeal from a denial of declassification following such review.

(t) Services of a humanitarian nature performed in such emergency situations as life-saving transportation for non-U.S. Armed Forces patients, search and rescue operations, and airlift of personnel and supplies to a disaster site. This does not mean that inter- and intra-Governmental agreements to recover all or part of costs should not be negotiated. Rather, it means the recipient or beneficiary will not be assessed a "user charge."

§ 288.10 Schedule of fees and rates.

This schedule applies to authorized services related to copying, certifying, and searching records rendered to the public by DoD Components, except when those services are excluded or excepted from charges under subsection D.3. of the basic Instruction, or § 288.9. Except as provided in special cases prescribed below, a minimum fee of $3.50 will be levied for processing any chargeable case. Normally only one copy of any record or document will be provided.

Requests Involving

(a) *Training and education (copies of documents required for other than official purposes):*

	Fee
(1) Transcripts:	
First copy	$3.50
Each additional copy (includes requests for transcripts of graduation from military academies and schools)	.45
(2) Certificates:	
First copy	3.50
Each additional copy (includes all requests for certificates, verification of attendance, and course completion from service schools and other facilities	.45

(b) *Medical and dental records of patients and former patients (when requested for purposes other than further medical treatment).* Covers requests for information from or copies of medical records, including clinical records (inpatient records of military and nonmilitary patients), health records (military outpatient records), outpatient records (non-Military outpatient records), dental records, and loan of x-rays.

(1) Searching and processing (per hour)	$13.25
Minimum charge	8.30
(2) Each typewritten page	3.50
(3) Office copy reproductions (per image)	0.10
(4) Copy or loan of each x-ray	8.50

(c) *Military membership and record (excluding medical and dental records).*

(1) Address of record, each	$3.50

(2) Copies of releasable military personnel records (e.g., effectiveness reports for officers and enlisted personnel) reproduced for the personal use of active, retired, and former members, next of kin of missing-in-action or deceased members of the Armed Forces.

Minimum charge (up to six reproduced images)	$3.50
Each additional image	.10
Statement of verification of Service or report of separation for individusls with other than honorable discharges	5.00

(d) *Photography.* (1) Still pictorial or documentary photographic prints. Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

	Price per print (quantity)			
	1 to 9	10 to 20	21 to 50	50+
Single weight (RC type) paper				
8×10	$4.50	$3.25	$2.50	$1.75
11×14	9.00	7.00	5.00	4.00
16×20	19.00	15.00	12.00	[illegible]50
20×24	30.00	2[illegible].00	20.00	15.00
Single weight color paper				
8×10	11.00	7.50	3.50	3.00
11×14	17.00	9.00	6.50	5.50
16×20	35.00	25.00	14.00	11.50
35mm color transparency slide made from color negative	5.00	3.50	3.00	3.00
35mm duplicate from 35mm slide	1.00	60	50	45
Print mounted on 16×20 cardboard + unit price of print	8.00			
Print mounted on 20×24 cardboard + unit price of print	12.00			
Color transparencies (first) 16.00 each additional				
8×10	20.00			
4×5	4.50			
4×5 B&W negative	2.00			
70mm color negative	7.50			

NOTE: Prices may vary by 20% of these average charges based on local inhouse labor, equipment, and supply (raw stock) costs.

(2) Motion Picture:

	Price per foot contact
Color	
16mm work print (positive work print from an original negative)	$0.20
16mm reversal work print	20
16mm color master ("A" roll)	60
16mm duplicate negative (from master positive)	60
16mm reversal duplicate negative	85
16mm internegative (from reversal original)	70
16mm short rolls (under 100 ft) - basic price	10
16mm tab-to-tab printing - basic price	20
Black and white	
16mm work print (negative/positive)	10
16mm master positive (fine grain)	25
16mm duplicate negative	25
16mm short rolls (under 200 ft) - basic price	10
16mm tab-to-tab printing - basic price	10

(3) *Miscellaneous:*

Magnetic tape—dub from 16mm film - raw stock	$65.00
Searching (per hour or fraction thereof)	18.00
Minimum charge per film order (including search)	35.00
16mm film to videotape (broadcast quality tape format per hour) - raw stock	275.00
Minimum charge for film to videotape transfer - raw stock	140.00

Aerial photographic print processing prices will be determined by the local DoD-operated lab due to limited availability.

35mm film processing for motion pictures is not done in-house by the DoD. Charges for this type of processing will be at prevailing contract rates on a case-by-case basis.

(e) *Construction and engineering information.* Copies of aerial photograph maps, specifications, permits, charts, blueprints, and other technical engineering documents.

(1) Searching, per hour or fraction thereof (including overhead costs)	$13.25
(2) First print	2.50
(3) Each additional print of same document	0.85

(f) *Copies of medical articles and illustrations.* Standards contained in the basic Instruction will be utilized in computing costs.

(g) *Claims, litigation.* Copies of documents required for other than official purposes. (Includes court-martial records furnishing information from Report of Claims Investigations; e.g., automobile collision investigations and safety reports.) Requests pertaining to private litigation and to cases in which the United States is a party and where court rules provide for reproduction of records without cost to the Government (if not covered in 2. or 3., above).

(1) Searching and processing (per hour)	$13.25
Minimum charge	8.30

NOTE.—Charges for professional search or research will be made in accordance with 10.b., below.

(2) Office copy reproduction (minimum for six pages or less)	$3.50
(3) Each additional image	0.10
(4) Certification and validation with seal, each	5.20

(h) *Publications and forms.* A search and/or processing fees, as described in 10.a., below, will be made for requests requiring extensive time (one hour or more).

(1) *Shelf stock.* (Requesters may be furnished more than one copy of publication or form if it does not deplete stock levels below projected planned usage.)

(i) Minimum fee per request (six pages or less)	$3.50
Plus:	
(A) Form, per copy	$.10
(B) Publications, per printed page	.02
(C) Microfiche, per fiche	.10

(ii) (Examples: Cost of 20 forms, $5.50; cost of a publication with 100 pages, $5.50; cost of microfiche publication consisting of 10 fiches, $4.50)

(2) Office copy reproduction (when shelf stock is not available):

(i) Minimum fee per request (six pages or less)	$3.50
(ii) Each additional page	.10
(iii) Minimum charge first fiche	8.70
(iv) Each additional fiche	.20

(i) *Engineering data (microfilm)*—(1) *Aperture cards.*

(i) Silver duplicate negative, per card	$0.75
When keypunched and verified, per card	.85
(ii) Diazo duplicate negative, per card	.65
When keypunched and verified, per card	.75
(2) 35mm roll film, per frame	0.50

BEST COPY AVAILABLE

(3) 16mm roll film, per frame	0.45
(4) Paper prints (engineering drawings), each	1.50
(5) Paper reprints of microfilm indices, each	0.10

(j) *General.* Charges for any additional services not specifically provided above, consistent with the provisions of the basic Instruction, will be made by the respective DoD Components at the following rates:

(1) Clerical search and processing, per hour	$13.25
Minimum charge	8.30
(2) Professional search or researching (To be established at actual hourly rate prior to search. A minimum charge will be established at ½-hourly rates.)	
(3) Minimum charge for office copy reproduction (up to six images)	3.50
(4) Each additional image	0.10
(5) Each typewritten page	3.50
(6) Certification and validation with seal, each	5.20
(7) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

PART 289—AVAILABILITY TO THE PUBLIC OF DoD DIRECTIVES, DoD INSTRUCTIONS, CHANGES THERETO, AND CERTAIN DoD PUBLICATIONS

Sec.

289.1 Subscription service.
289.2 Ordering individual copies.
289.3 Ordering complete sets of DoD issuances.

AUTHORITY: 10 U.S.C. 133, 31 U.S.C. 483a.

SOURCE: 48 FR 31019, July 6, 1983, unless otherwise noted.

§ 289.1 Subscription service.

(a) DoD issuances published in the Number Index portion of DoD 5025.1-I (except those marked as not releasable to the public) are available on a subscription basis, with automatic mailing upon payment of fees (see § 289.1(b)).

(1) The DoD issuances are published under the following subject groups:

1000-Manpower, Reserve Affairs, and Personnel

2000-International Programs

3000-Planning, Research and Development, Intelligence, and Computer Technology

4000-Logistics, Acquisition, and Resources Management

5000-General Administration

6000-Safety, Health, and Medical

7000-Comptrollership

DOD 5025.1-I-DOD Directives System Quarterly Index

(2) The subscription will entitle the subscriber to receive automatically, for one year, one copy of each new and revised issuance published under the subject groups ordered.

(3) Subscriptions will be accepted for one or more subject groups.

(b) An annual service charge of $13 for the DoD issuances published under each subject group will apply without regard to the number of documents which may be issued within the group. This fee is to defray administrative expense for screening and distributing DoD issuances.

(1) Orders may be forwarded to the Director, Navy Publications and Printing Service, Eastern Division, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111, in any form, accompanied by a certified check or money order payable to Navy Publications and Printing Services.

(2) Subscription service pertains only to the release of new and revised DoD issuances and the DoD 5025.1-I.

§ 289.2 Ordering individual copies.

(a) In addition to the subscription service on new and revised DoD issuances outlined in § 289.1, individual copies of any other DoD issuance and those DoD publications that are identified in the DoD 5025.1-I as being stocked at the Naval Publications and Forms Center (NPFC) and listed in the number index portion of 5025.1-I (except those marked not releasable to the public) will continue to be made available. While DoD issuances will continue to be mailed without charge, a fee may be charged for some DoD publications.

(b) NPFC will accept requests by TELEX, telegraph, or letter. For urgent requests TELEX and Western Union messages are recommended. Use TELEX number 834295 or Western Union Number 710-670-1685. The commercial telephone number is (215) 697-3321 or 2667. Include personal or company name, street address or P.O. box, city, state, country (if applicable), and zip code when submitting requests by telephone, TELEX, or Western Union or when writing. The number of line items requested must be limited to five or less.

(c) This service is provided to the public and federal agencies other than the Department of Defense. Submit written requests to: Commanding Officer (Code 301, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

§ 289.3 Ordering complete sets of DoD issuances.

You may obtain a complete set of DoD issuances by forwarding the order together with a check or postal money order in the amount of $70 payable to Navy Publications and Printing Service to:

Director (Code NPA), Navy Publications and Printing Service Office, 700 Robbins Avenue, Philadelphia, PA 19111.

This charge represents the cost of processing, consolidating, and shipping. This charge does not include printing costs. Items not in stock will not be backordered.

PART 290—AVAILABILITY OF DEFENSE CONTRACT AUDIT AGENCY RECORDS

Subpart A—Organization

Sec.

290.1 Purpose.
290.2 Origin and authority.
290.3 Objective.
290.4 Mission.
290.5 Composition.

Subpart B—Availability of DCAA Records

290.20 Purpose.
290.21 Applicability and scope.
290.22 Policy.
290.23 "Records" defined.
290.24 Public inspection and copying.
290.25 Requests for records.
290.26 Procedures for submitting requests.
290.27 Material withheld from disclosure.
290.28 Administrative appeals of denials.
290.29 Judicial action.

AUTHORITY: 5 U.S.C. 301 and 552, as amended by Pub. L. 93-502, Nov. 21, 1974.

SOURCE: 42 FR 40433, Aug. 10, 1977, unless otherwise noted.

Subpart A—Organization

§ 290.1 Purpose.

This subpart implements 5 U.S.C. 552 by describing the central and field organizations of DCAA and the general course and method by which DCAA's functions are channeled and determined.

§ 290.2 Origin and authority.

DCAA was established by the Secretary of Defense under Department of Defense (DoD) Directive 5105.36 and began operating on July 1, 1965. Its Director reports to the Assistant Secretary of Defense.

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3045, Jan. 23, 1986]

§ 290.3 Objective.

DCAA's objective is to assist DoD in purchasing defense materials and services at the lowest price or cost which is both reasonable and fair to the Government and the supplier. While emphasis is on reasonableness and fairness, it also includes the premise that prices paid by the Government should not reflect the cost of contractor operations or practices which are in any manner wasteful or unnecessary.

§ 290.4 Mission.

(a) DCAA performs all necessary contract audit for DoD, and provides accounting and financial advisory service regarding contracts to all DoD components responsible for procurement and contract asdministration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. It also furnishes advisory contract audit service to a number of other government agencies under agreements between DoD and such agencies.

(b) DCAA audits contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control, accounting, costing, estimating, and general business practices and procedures to give advice and recommendations to procurement and contract administration personnel on: acceptability of costs incurred under cost, redetermination, incentive, and similar type contracts; acceptability of estimates of costs to be incurred as represented by contractors incident to the award, negotiation, modification, and change of contracts; adequacy of contractors' accounting and financial management systems and estimating procedures. DCAA also performs post-award audits of contracts in order to assure compliance with the provisions of Pub. L. 87-653 (Truth in Negotiations), and reviews contractor compliance with the rules, regulations, and promulgated standards of the Cost Accounting Standards Board established by Pub. L. 91-379.

(c) DCAA assists responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors; it cooperates with other DoD components on reviews, audits, analyses, or inquiries involving contractors' financial positions or financial and accounting policies, procedures, or practices. DCAA also maintains liaison auditors at major procuring and contract administration offices and provides assistance in the development of procurement policies and regulations.

§ 290.5 Composition.

(a) DCAA consists of seven components: A headquarters and six Regional Offices. The Regional Offices manage over 400 field audit offices (FAOs) and suboffices located throughout the United States and overseas. FAOs are called branch and resident offices. Suboffices are established by Regional Directors as an extension of an FAO when required by that office to furnish special onsite contract audit service or effective communication and coordination between procurement and contract audit elements on a permanent basis. A suboffice is satellited on its parent FAO for supervision, release of audit reports, and administrative support.

(b) The headquarters located at Cameron Station, Alexandria, Virginia consists of eight principal staff elements:

(1) The Director exercises worldwide direction of DCAA.

(2) The Deputy Director serves as principal assistant to the Director and acts for the Director in his absence.

(3) The Assistant Director, Operations, authorized to act for the Director and Deputy Director in their absence, is responsible for audit management, technical audit programs, and the Technical Services Center in Memphis, Tennessee.

(4) The Assistant Director, Policy and Plans, is responsible for policy formulation, cost accounting standards, and audit guidance and procedures and the Defense Contract Audit Institute, Memphis, Tennessee, and acts for the Director in the absence of the Director, Deputy Director, and Assistant Director, Operations.

(5) The Assistant Director, Resources, is responsible for the programs and procedures related to the management and administration of all resources required to support the audit mission, and acts for the Director in the absence of the Director, Deputy Director, Assistant Director, Operations, and Assistant Director, Policy & Plans.

(6) The General Counsel provides legal and legislative advice to the Director and all members of the agency staff.

(7) The Executive Officer performs a variety of confidential and sensitive special projects and assignments for the Director.

(8) The Special Assistant for Quality Control reviews the agency's compliance with established quality control standards, policies, and procedures.

(c) Regional Offices are located in Atlanta, Boston, Chicago, Los Angeles, Philadelphia, and San Francisco. Regional Directors direct and administer the DCAA audit mission, and manage personnel and other resources assigned to the regions; act as principal advisors to the Director; manage the contract audit program; and direct the operation of FAOs within their region. Principal staff elements of Regional Offices are Office of the Regional Director, Deputy Regional Director, Regional Special Programs Manager, and Regional Resources Manager.

(d) A resident office is established at a contractor's location when the amount of audit workload justifies the

BEST COPY AVAILABLE

assignment of a permanent staff of auditors and support staff. A resident office may perform procurement liaison audit functions.

(e) A branch office is established at a strategically situated location within the region, responsible for performance of all contract audit service within the assigned geographical area on a mobile basis exclusive of contract audit service performed by a resident or liaison office within the area. A branch office may perform procurement liaison audit functions.

(f) A liaison office is established at a DoD procurement or contract administration office within the region when required on a permanent basis to provide effective communication and coordination between procurement and contract audit elements in the interest of achieving the objectives of prudent contracting. A liaison office maintains a program to assure full utilization of contract audit services by procurement and contract administation offices within the region, provides audit advisors, and measures customer satisfaction; participates in prenegotiation and negotiation conferences at the request of procurement and contracting officers and furnishes related advisory services.

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3045, Jan. 23, 1986]

Subpart B—Availability of DCAA Records

§ 290.20 Purpose.

This subpart implements 5 U.S.C. 552 (Freedom of Information Act), as amended, and supplements DoD Directive 5400.7 (32 CFR Part 286) by describing established facilities at which, the officials from whom, and the procedures whereby members of the public may inspect and copy or obtain copies of unclassified DCAA records.

§ 290.21 Applicability and scope.

(a) *Applicability.* This subpart shall apply to all offices of DCAA and shall govern responses by DCAA officials to written requests from members of the public for permission to examine, or to be provided with copies of DCAA records.

(b) *Scope.* Requests for records under the Privacy Act of 1974 (5 U.S.C. 552a) are governed by the provisions of 32 CFR Part 290a. See § 286.2 of this subchapter for other categories of requests for information or records that are excluded from the scope of this subpart.

§ 290.22 Policy.

It is the policy of DCAA to make available to the public the maximum amount of information concerning its operations and activities. This basic policy is subject to the exemptions recognized in 5 U.S.C. 552(b) and § 286.14 of this subchapter. Notwithstanding such permissible exemptions, it is DCAA's policy that an exempt record will be made available when its disclosure would not be inconsistent with statutory requirements and when the DCAA official designated in § 290.25(e) determines that no governmental interest will be jeopardized by their release. The latter determination is within the sole discretion of DCAA. However, any party that has furnished information to DCAA will be notified upon receipt of a request and of the intent to release information which may be confidential, except as to information discussed at § 290.26(b)(2).

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3046, Jan. 23, 1986]

§ 290.23 "Records" defined.

In determining whether documentary material qualifies as a "record," consideration will be given to 44 U.S.C. 3301, which defines the word "record" as follows:

> (It) includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein.

(a) Records are not limited to permanent or historical documents but include current documents.

(b) The term "records" does not include objects or articles such as structures, furniture, paintings, sculpture, three dimensional models, vehicles, equipment, etc., whatever their historical value or value as "evidence."

(c) Formulae, designs, drawings, research data, computer programs, technical data packages, etc., are not considered "records" within the intent of 5 U.S.C. 552, even though maintained in documentation form, because of development costs, utilization, or value. These items are considered property, not preserved for informational value nor as evidence of agency functions, but as exploitable resources to be utilized in the best interest of all the public. Requests for copies of such material shall be evaluated accoring to policies expressly directed to the appropriate dissemination or use of such property. Requests to inspect such material to determine its content for informational purposes shall normally be granted unless inspection is inconsistent with the obligation to protect the property value of the material, such as may be true for certain formulae.

(d) The term "records" does not include unaltered stocks of publications and processed documents such as regulations, manuals, instructions, and related materials that are available to the public through an established distribution system for sale or without charge. Examples of such materials are publications available to the public by purchase from DCAA or the Defense Contract Audit Manual and other documents available by purchase from the Superintendent of Documents, U.S. Government Printing Office. Individuals requesting such material under the FOIA will be referred to the appropriate public sales outlet.

§ 290.24 Public inspection and copying.

(a) 5 U.S.C. 552(a)(2) requires agencies to make available for public inspection and copying those materials discussed in § 286.20 of this subchapter. The action in this section is being taken for the convenience of possible users and does not constitute a determination that all of the documents are within the scope of subsection (a)(2) of the Freedom of Information Act.

(b) DCAA documents pertaining to contract audit are derived from Office of Management and Budget/Office of Federal Procurement Policy issuances, Cost Accounting Standards Board promulgations, Federal Acquisition Regulations, and Pub. L. 87-653 (Truth in Negotiations), and disseminated to staff under the Quarterly Index of DCAA Numbered Publications and Memorandums (DCAA Instruction 5025.2) in numerical order under topical headings and indicated by 4-digit designators. The 5400 series covers public affairs and the 7640 series covers audit topics. Other numerical topical series cover internal housekeeping procedures that are issued by the Department of Defense and other Federal agencies under whose administrative regulations DCAA operates.

(c) The numbered publications discussed in paragraph (b) of this section, are infrequently amended or supplemented by interim numbered memorandums pending formal revision to the numbered publication. Additionally, numbered memorandums are issued as auxiliary illustrations and managerial reminders. Such staff memorandums are indexed in the Quarterly Index of DCAA Numbered Publications and Memorandums. Memorandums issued by Headquarters are referred to as Memorandum for Regional Directors (MRDs); those issued by regional offices to FAOs are called Regional Memorandums (RMs).

(d) The DCAA Quarterly Index of Numbered Publications and Memorandums will not be published in the FEDERAL REGISTER because of the volume and the limited applicability to the general public. However, the index is available upon request at no costs.

(e) The DCAA Headquarters and each of the six regional offices will publish a quarterly index of the documents discussed above and the documents that are generally available to the public will be maintained in the reading rooms of the Headquarters, regional offices, FAOs, and the Defense Contract Audit Institute.

(f) Documents identified in the DCAA Headquarters or regional quarterly indexes are generally available to the public through purchase from DCAA or the Superintendent of Documents. However, in some instances, it may be necessary to deny all or portions of a document that falls under an exemption of the Freedom of Information Act. In such cases, the requester will be advised fully in writing of the rationale for invoking the exemption.

[51 FR 3046, Jan. 23, 1986]

§ 290.25 Requests for records.

(a) *General.* According to the spirit and intent of 5 U.S.C. 552 and 32 CFR Part 286, upon receipt of written or verbal requests to DCAA offices, all reasonable efforts should be made to advise members of the public on the correct means for securing permission to examine desired records, or for obtaining copies of such records.

(b) *Identification of records.* While it is expected that DCAA offices will use their knowledge of the contents of their files and expend reasonable efforts to assist the public in identifying records which contain the particular information sought, the requester must "reasonably describe" the record sought. A record must exist at the time of the request. It is not required that a record be "created" or compiled for the purpose of furnishing information not already available in existing records. A record that is maintained by computer is normally deemed to exist for this purpose, but only if retrievable in approximately the form desired with an existing program or printout.

(c) *Fees.* Fees shall be determined according to § 286.60 of this subchapter. Fees shall be charged only for direct cost of search and duplication and shall not include indirect costs or costs attributable to reviewing the records.

(1) Fees will not be charged if, for a single request, the direct search cost is less than the automatic fee waiver threshold specified in § 286.60.

(2) No request will be processed until the requester has been advised in writing of the estimated amount of the fees if they are expected to exceed the automatic waiver thresholds.

(3) Time limits specified in § 286.50 of this subchapter will not begin until payment of fees is resolved or the requester's entitlement to a waiver of fees is established.

(4) Ordinarily, fees will not be assessed for nonproductive search or when all records located are denied. However, fees may be assessed if the requester insists upon a search and agrees to such fees prior to the search after being advised that the search is likely to be unproductive.

(5) Fees normally must be paid in advance of rendering the service. An exception exists when the requester promises in writing to pay upon receipt of a statement, and represents that he will be able to pay. When the anticipated combined total of direct search and duplication fees to be assessed exceeds $40.00, repayment of all or a portion of the estimated fees may be required before processing the request.

(6) Subsequent requests will not be processed when, at the time of the request, the requester is known to be in default of payment of fees incurred in connection with a previous request.

(7) Payment of fees may be by personal check, bank draft drawn on a U.S. bank, or by U.S. Postal money order. All such payments shall be made payable to the Treasurer of the United States. DCAA does not have the facilities for handling cash payments. A receipt for fees paid will be given only upon request.

(d) *Waiver of fees.* The determination to waive fees is at the discretion of the officials listed in § 290.25(e). The following requirements pertain to requests for waiver of fees in excess of the automatic waiver threshold:

(1) If a requester wishes to request a waiver of fees, the request must provide sufficient information to enable a proper determination. A statement that release is in the public interest, the identity or tax status of the requester, or the intention that the record will be made public is not persuasive grounds for granting a waiver. The requester should provide information concerning the planned use of the information, how this will serve the general public interest, the segment of the public to benefit from the information, the size of the public to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the material to be released, the likelihood that tangible good will be realized, and any other information which may be pertinent to the appropriateness of public payment. This information does not influence the determination to release or withhold a record; if influences the determination as to whether the public will assume the direct search and duplication costs. The requester need not

provide this information if he does not wish the public to bear the cost.

(2) Fee waivers shall be decided on case-by-case evaluation. Blanket waivers for specific individuals or organizations will not be granted.

(3) If the requester declares his unwillingness to pay fees and does not warrant a waiver of fees, the request will not be processed if it is estimated that the direct search and duplication costs will exceed the automatic waiver threshold.

(e) *Release/denial authorities.* The following officials are authorized to deny as well as grant requests for documents or records:

(1) Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

(2) Regional Director, Defense Contract Audit Agency, 805 Walker St, Suite 103, Marietta,GA 30060-2731

(3) Regional Director, Defense Contract Audit Agency, Waltham Federal Center, 424 Trapelo Road, Waltham, MA 02154-6397.

(4) Regional Director, Defense Contract Audit Agency, 527 South LaSalle Street, Suite 652, Chicago, IL 60605-1096.

(5) Regional Director, Defense Contract Audit Agency, 2500 Wilshire Boulevard, Suite 1270, Los Angeles, CA 90057-4366.

(6) Regional Director, Defense Contract Audit Agency, 600 Arch Street, Philadelphia, PA 19106-1604.

(7) Regional Director, Defense Contract Audit Agency, 450 Golden Gate Avenue, Box 36116, San Francisco, Calif. 94102-3563.

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3046, Jan. 23, 1986]

§ 290.26 Procedures for submitting requests.

(a) To qualify as a request within the technical requirements of this subpart, a request for copies of, or for permission to examine, DCAA records must:

(1) Be in writing and indicate expressly, or by clear implication, that it is a request under the Freedom of Information Act, 5 U.S.C. 552, or this regulation;

(2) Contain a reasonable description of the particular record sought, sufficiently accurate and specific to enable personnel to locate and identify the record with a reasonable amount of effort; if the record cannot be specifically identified, an explanation of the purposes for which they are desired might be of assistance; and

(3) Contain a check or money order for the anticipated search and duplication fees (at least an adequate deposit); or a clear statement that the requester will be willing and able to pay all fees or to pay such fees up to a specified limit; or satisfactory evidence establishing that the requester is entitled to a waiver of fees.

(b) *Addressing requests.* A list of addresses from which DCAA records may be requested is given in § 290.25(e). A request will not be deemed to have been received for purposes of time limits specified in § 286.11 of this Subchapter until it is received by the appropriate addressee.

(1) *Misdirected requests.* A request received by an official who is not the appropriate official indicated in § 290.25(e) shall be promptly readdressed and forwarded directly to the appropriate official. The requester shall be notified of this referral. Direct contact between the original recipient and the correct addressee is encouraged to ensure expeditious handling of the request.

(2) Requests for copies of audit reports will be referred to the appropriate contracting officer when received by a DCAA office. Requesters will be notified of such referrals. In addition, any party that has furnished information which may be confidential, commercial, financial, or trade secrets and which is included in the requested report will be notified of the referral.

(3) All other requests should be directed to the appropriate Regional Director, if known. If the location of the record is not known, the request should be directed to the Records Administrator.

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3046, Jan. 23, 1986]

§ 290.27 Material withheld from disclosure.

Only those records falling within the specific exemptions listed in 5 U.S.C. 552(b) and § 286.4 of this subchapter may be withheld. Any person who is denied a request for a record, in whole or in part or denied a waiver of fees will be given a written explantion of the basis for the determination and advised of his right to appeal the denial.

§ 290.28 Administrative appeals of denials.

Appeals of denials should be addressed to the Assistant Director, Resources, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178. A copy of the initial request and the initial denial should be forwarded with the appeal letter. Final refusal to provide a record or to waive fees will be made in writing by the Assistant Director, Resources, after consultation with the Counsel, Assistant Director, Operations, or other appropriate staff elements. The requester will be advised of his right to judicial review.

[42 FR 40433, Aug. 10, 1977, as amended at 51 FR 3046, Jan. 23, 1986]

§ 290.29 Judicial action.

A requester will be deemed to have exhausted his administrative remedy after he has been denied the requested record by the Assistant Director, Resources, or when the agency fails to respond to his request within the time limits prescribed by Part 286 of this Subchapter. The requester then may seek an order from a U.S. District Court in:

(a) The district in which he resides or has his principal place of business; (b) the district in which the record is situated; or (c) in the U.S. District Court for the District of Columbia, enjoining the agency from withholding the record and ordering its production.

PART 290a—DEFENSE CONTRACT AUDIT AGENCY, PRIVACY ACT OF 1974

Sec.
290a.1 Purpose.
290a.2 Applicability and scope.
290a.3 Policy.
290a.4 Authority and responsibilities.
290a.5 Definitions.
290a.6 Access by the individual.
290a.7 Disclosure to others.
290a.8 Collection of personal information from individuals.
290a.9 Exemptions.
290a.10 Systems of records.
290a.11 Annual report.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 40 FR 55538, Nov. 28, 1975, unless otherwise noted.

§ 290a.1 Purpose.

This part implements the Privacy Act of 1974 by prescribing:

(a) The procedures whereby individuals can be notified in response to their requests if any system of records named by the individuals contains a record pertaining to them.

(b) The requirements for verifying the identity of individuals who request their records or information pertaining to them before the record or information shall be made available to them.

(c) The procedures for granting access to individuals upon their request of their records or information pertaining to them.

(d) The procedures for reviewing a request from individuals concerning the amendment of any record or information pertaining to them, for making a determination on the request, and for an appeal of an initial adverse determination.

(e) The procedures and policies governing the collection, safeguarding, maintenance, public notice, use and dissemination of personal information.

(f) The conditions under which disclosure of personal information may be made and procedures for exempting systems of records from certain requirements of the Privacy Act of 1974.

§ 290a.2 Applicability and scope.

(a) The provisions of this part apply to all offices of DCAA, hereinafter referred to singularly as "element" or collectively as "elements."

(b) Its provisions govern the collection, maintenance, use, and dissemination of personal information by DCAA in accordance with 5 U.S.C. 552a. Requests for information under the Freedom of Information Act, 5 U.S.C. 552, by an individual about another individual are governed by the provisions of 32 CFR Part 290. Requests for personal information from the General Accounting Office are governed by DoD Directive 7650.1, "General Accounting Office Comprehensive Audits." Requests for personal information from the Congress are governed by DoD Directive 5400.4, "Provision of Information to Congress." Requests from other agencies and the courts are governed by DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," as well as the provisions of this part.

§ 290a.3 Policy.

The policy of DCAA is to:

(a) Preserve the personal privacy of individuals, permitting individuals to know what records pertaining to them are collected, maintained, used, or disseminated in DCAA, and to have access to and have a comprehensible copy made of all or any portion of such records, and to correct or amend such records.

(b) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

§ 290a.4 Authority and responsibilities.

(a) A DCAA Privacy Board is hereby established for the purpose of ensuring the preservation of individual privacy within DCAA. Privacy programs and procedures shall be developed and coordinated by the Board under the Chairmanship of the Assistant Director, Resources.

(1) Membership of the Board shall consist of the Records Administrator, who shall serve as the Executive Secretary and Privacy Act Coordinator; and representatives designated by the Assistant Director, Operations and Professional Development; Counsel; Director of Personnel; Security Officer; and Chief, Information Systems and Services.

(2) The Board shall:

(i) Identify all DCAA systems of records affected by the Privacy Act.

(ii) Obtain all data required by the act concerning each record system so identified.

(iii) Review policies, practices, and procedures relating to each identified system of records to ensure they are in conformity with the act.

(iv) Supervise the preparation for publication in the FEDERAL REGISTER of all required information on systems of records affected by the act.

(v) Review for conformity with the act, all procedures, including forms, which require an individual to furnish information, and formulate corrective or supplementary provisions as necessary.

(vi) Recommend establishment of DCAA policies which will provide safeguards to protect personal privacy.

(vii) Refer to the DoD Privacy Board for resolution, any requirement for information from an individual which does not appear to be clearly authorized by law or Executive Order.

(viii) Review proposed DCAA implementing instructions and related issuances pertaining to the Privacy Act, as well as draft implementing instructions of the DCAA Regional Offices in order to provide the comprehensive guidance necessary for uniform compliance with the act by all elements of DCAA.

(ix) Serve as the focal point on privacy matters for DCAA in communications with the DoD Privacy Board, which serves as the focal point in communications with the Office of Management and Budget, the Privacy Protection Study Commission, and the Office of the Federal Register for publication of systems notices.

(b) The Assistant Director, Resources, in conjunction with the DCAA Privacy Board shall:

(1) Formulate DCAA policies to ensure that both manual and ADP record systems contain appropriate safeguards to protect personal privacy.

(2) Ensure development throughout DCAA of an appropriate training program for all personnel whose duties involve responsibilities for systems of records affected by the act.

(c) Regional Managers, the Chief of Detachment A, and the Manager of the Defense Contract Audit Institute shall:

(1) Designate a Privacy Act Coordinator to serve as the principal point of contact on privacy matters.

(2) Establish and maintain an effective internal Privacy Program, through all echelons, as prescribed herein.

§ 290a.5 Definitions.

(a) Individual: A citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor has the same rights as the individual and may act on behalf of the individual.

(b) Maintain (records on individuals): Collect, use, or disseminate.

(c) Record: Any item, collection, or grouping of information about an individual that is maintained by an element, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) System of records: A group of any records under the control of any element from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(e) Routine use: With respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses, but also all the proper and necessary uses of the record, even if such use occurs infrequently.

§ 290a.6 Access by the individual.

(a) Upon request, individuals shall be informed whether or not a system of records contains a record pertaining to them. Accompanied by a person of their own choosing, if so desired, they shall be permitted to review their records, and to obtain a copy of such records in a form that is comprehensible to them unless exempted in accordance with § 290a.9 or § 290a.6(a)5, below. This part does not require that a record be created or that an individual be given access to records which are not retrieved by name or other individual identifier. Only costs of reproduction may be charged; however, the first copy of a personnel record maintained by a Personnel Office should be provided without charge. If copying is the only means whereby the record can be made available to the individual, reproduction fees will not be assessed; i.e., when a copy must be made in order to delete information contained on the record pertaining to another individual.

(1) The granting of access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(2) Prior to being granted access to personal information, an individual may be required to provide reasonable verification of identity.

(i) No verification of identity shall be required of an individual seeking access to records which are otherwise available to any member of the public under the Freedom of Information Act.

(ii) For the individual who seeks access in person, verification of identity will normally be made by those documents which an individual is likely to have readily available, such as an employee identification card, driver's license, or medical card.

(iii) When access is requested by mail, verification of identity may consist of the individual providing certain minimum identifying data, such as name and date of birth or such other information deemed necessary by the element having custody of the record. If the sensitivity of the data warrants, a signed, notarized statement of identity may be required.

(iv) An individual shall not be denied access to his record for refusing to disclose his Social Security Number (SSN) unless disclosure of his SSN is required by statute or by regulation adopted before January 1, 1975.

(v) Individuals may not be denied access to a record pertaining to themselves because those records are exempted from disclosure under the provisions of the Freedom of Information Act.

(3) Access to a record or a copy thereof will not be denied solely because the record's physical presence is not readily available, i.e., on magnetic tape, or because the context of the record may disclose sensitive information about another individual. To protect the personal privacy of other individuals who may be identified in a record, an extract shall be prepared deleting only that information which would not be released to the requesting individual under the Freedom of Information Act.

(4) A medical record shall be disclosed to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the information may be transmitted to a physician named by the requesting individual.

(5) This part does not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

(6) An element may require an individual who wishes to be accompanied by another person when receiving access to his records to furnish a written statement authorizing discussion of the records in the presence of the accompanying person.

(7) Any requests from individuals for access to or copies of their own records shall be processed in accordance with this part and not the Freedom of Information Act. Normally, requests for access to records should be acknowledged within 10 working days of receipt and access provided within 30 working days.

(8) Copies of investigatory records compiled by an investigative organization, but in the temporary custody of an element requesting the record for purposes of adjudication or other personnel action, are the records of the originating investigative agency. Individuals seeking access to such records shall be directed to the originating investigative organization and should be instructed to direct all requests submitted under the Privacy Act of 1974 to that organization. Records concerning the adjudication, or other personnel actions based on the investigative records, are originated by DCAA and are the records of DCAA. All requests for these records shall be referred to the Security Officer, DCAA who shall respond under this part concerning them.

(b) Amendment of personal information.

(1) Individuals shall be given the opportunity to request either in person or through the mail that their records be amended; however, all requests for such amendment must be made in writing. Instructions for the preparation of a request and any forms employed should be as brief and as simple as possible. Requests should contain as a minimum, identifying information to locate the record, a description of the items to be amended and the reason amendment is being requested. A request shall not be rejected or required to be resubmitted unless additional information is essential to process the request. Incomplete or inaccurate requests shall not be rejected categorically; the individual shall be asked to clarify the request as needed. Individuals shall be required to provide identification of identity as in § 290a.6(a)(2) to assure that the requester is seeking to amend records pertaining to him and not inadvertently or intentionally, the records of another individual.

(2) A written acknowledgment of the receipt of a request for amendment of a record must be provided to the individual within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. The acknowledgment shall clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. Whenever practicable the decision shall be made within 30 working days. No separate acknowledgment of receipt is necessary if the request can be either approved or denied, and the individual advised within the 10-day period. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) If the element agrees with any portion or all of the individual's request to amend a record, it shall promptly advise the individual and amend the record accordingly. If a disclosure accounting has been made, the element shall advise all previous recipients of the record that the amendment has been made and the substance of the correction.

(4) If the element disagrees with all or any portion of a request to amend a record, it shall promptly:

(i) Advise the individual of its refusal and the reasons therefor;

(ii) Inform the individual that he may request a further review by the Assistant Director, Resources; and

(iii) Describe the procedures for requesting such a review, including the name and address of the Assistant Director, Resources.

(5) A review of the initial refusal to amend a record shall be made if requested by the individual.

(i) The Assistant Director, Resources, shall make a review of the initial determination.

(ii) If, after conducting the review, the Assistant Director, Resources, also refuses to amend the record in accordance with the individual's request, the individual shall be notified:

(A) Of the refusal and the reasons therefor;

(B) Of the right to file a concise statement of reasons for disagreeing with the decision of the agency;

(C) Of the procedures for filing a statement of disagreement; and that such statement will be made available to anyone to whom the record is subsequently disclosed;

(D) That prior recipients of the disputed record will be provided a copy of the statement of disagreement to the extent that an accounting of disclosures is maintained;

(E) Of his right to seek judicial review of the agency's refusal to amend a record.

(iii) If the Assistant Director, Resources determines that the record should be amended in accordance with the request, the element shall amend the record, advise the individual and inform previous recipients where an accounting of disclosures has been maintained.

(iv) A final determination on the individual's request for a review of an initial refusal to amend a record must be completed within 30 working days after receipt by the proper office unless the Director, DCAA determines that a fair and equitable review cannot be completed in that time. If additional time is required, the individual shall be informed in writing of the reasons for the delay and of the approximate date on which the review is expected to be completed.

(6) When an individual files a statement of dispute, the element shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently grant access to, use, or disclose the record. The notation itself shall be integral to the record. Where an accounting of disclosure has been made, the element shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement.

(i) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the element shall note which information is disputed and provide a copy of the individual's statement.

(ii) An element may include a brief summary of its reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. The element's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedures.

§ 290a.7 Disclosure to others.

(a) Except as prescribed in § 290a.6, this part does not require disclosure of records to anyone other than the individual to whom the records pertain.

(b) No record contained in a system of records maintained within DCAA shall be disclosed by any means of communication to any person, or to any agency outside DCAA, except pur-

BEST COPY AVAILABLE

suant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record will be:

(1) To those officials and employees of DCAA who have a need for the record in the performance of their duties and the use is compatible with the purpose for which the record is maintained. This includes, for example, transfer of information between DoD components when personnel assigned to DCAA are processed by an activity of another component such as the Defense Investigative Service, the Defense Supply Agency, or one of the Military Departments.

(2) Required to be disclosed to a member of the public by the Freedom of Information Act. Some examples of personal information pertaining to civilian employees which are normally released without an unwarranted invasion of privacy are: Name, present and past positions, office phone number, and grade. However, disclosure of personal information pertaining to civilian employees shall be made in accordance with the Federal Personnel Manual and, therefore, all requests for such information should be referred to the appropriate Personnel Office.

(3) For a routine use as defined in § 290a.5 and described in DCAA record system notices.

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity authorized by law.

(5) To a recipient who has provided DCAA with advance adequate written assurance that: The record will be used solely as a statistical research or reporting record; the record is to be transferred in a form thet is not individually identifiable, i.e., the identity of the individual cannot be determined by combining various statistical records; and will not be used to make any decisions about the rights, benefits, or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of DCAA in this instance and the records remain under the control of DCAA. No disclosure accounting record of the transfer of records to Federal records centers need be maintained.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the element which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of the Counsel, DCAA when criminal conduct is suspected, provided that such disclosure has been established in advance as a routine use.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee. This does not authorize the disclosure of any record subject to this part to members of Congress acting in their individual capacities or on behalf of their constituents, unless the individual consents.

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to the order of a court of competent jurisdiction.

(i) When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, make reasonable efforts to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in the element's records.

(ii) Upon being served with an order to disclose a record, the element shall endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure shall be made at the time the element complies with the order or subpoena.

(c) Each DCAA element, with respect to each system of records under its control shall:

(1) Except for disclosures made under paragraphs (b)(1) and (b)(2) of this section, keep an accurate accounting of the date, nature, and purpose of each disclosure of a record to any person or to another agency; and the name and address of the person or agency to whom the disclosure is made. A DCAA element need not make a notation on a single document of every disclosure of a particular record, provided it can construct from its system the required accounting information when required by the individual; when necessary to inform previous recipients of any amended record; or when providing a cross reference to the justification or basis upon which the disclosure was made, including any written documentation as required in the case of the release of records for statistical or law enforcement purposes.

(2) Retain the accounting made under paragraph (c)(1) of this section, for at least 5 years after the last disclosure or the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(3) Upon request of the individual to whom the record pertains, make available to that individual all information in its accounting of disclosures except that pertaining to disclosures for law enforcement purposes pursuant to § 290a.7(b)(7).

(d) (1) An individual's name and address may not be sold or rented by an element unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(2) Lists or compilations of names and home addresses, or single home addresses will not be disclosed, without the consent of the individual involved, to the public including, but not limited to, individual congressmen, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overriding interests.

§ 290a.8 Collection of personal information from individuals.

(a) Personal information shall be collected to the greatest extent practicable directly from the individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made under certain circumstances, such as the following:

(1) There is a need to insure accuracy of information supplied by an individual by verifying with a third party, such as in the case of verifying information for a security clearance.

(2) The nature of the information is such that it can only be obtained from a third party, such as an employee's performance in a previous job or assignment.

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) Each individual who is asked to supply personal information must be told of the authority (statute or Executive Order) which authorizes its solicitation; the principal purpose or purposes for which it is to be used; the routine uses to be made of it; whether furnishing such information is mandatory or voluntary; and the effects on him, if any, of not providing it. This notice to the individual may be made on the form used to collect the infor-

BEST COPY AVAILABLE

mation or on a separate form which can be retained by the individual. This advice must be given regardless of the media used in requesting information, whether it is a "form" in the usual sense, i.e., a preprinted document with a control number and an edition date, or a format, questionnaire, survey sheet, or report rendered on a blank sheet.

(1) Forms in use before September 27, 1975, which are to be used on and after that date must meet the notice requirements by use of a separate statement to accompany each form subject to the provisions of the Privacy Act of 1974. The statement will be assigned the identifying number used in collecting the information and the suffix "Privacy Act Statement," as follows:

(i) For forms in regularly issued, numbered series, the Privacy Act Statement shall bear the same number as the form to which it pertains.

(ii) For unnumbered formats, questionnaires, survey forms, and reports, the Privacy Act Statement will bear the report control symbol or OMB Approval Number under the authority of which the information is collected if applicable.

(2) As forms are revised or new ones issued, the Privacy Act Statement shall be incorporated, if practical, in the body of each form, format, questionnaire, survey sheet, or report initiated or revised on or after September 27, 1975. Where feasible, the Privacy Act Statement when incorporated on a form, format, etc. should be positioned in such a manner that the individual will be informed of the information required by the act before he begins to furnish any of the information requested.

(3) (i) The proponent, i.e., the initiator, has the final responsibility for determining whether a form, format, questionnaire, survey, or report requires a Privacy Act Statement. Statements should be sufficiently complete and specific, but, at the same time, be concise and couched in easily understood language.

(ii) Forms and information management officers at all echelons of DCAA must assure that Privacy Act Statements are available and that new forms contain the Statement, if required.

(iii) No element may deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his SSN, unless such disclosure is required by Federal statute or to any element maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. Executive Order 9397, November 22, 1943, authorizes elements to use the SSN as a system of numerical identification of individuals.

(iv) Any DCAA element which requests an individual to disclose the SSN must inform that individual whether disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(c) If disclosure of the SSN is not required by Federal statute or is not for a system of records in existence and operating prior to January 1, 1975, DCAA elements are not precluded from requesting it from the individuals concerned. However, the separate Privacy Act Statement for the SSN alone or a merged Privacy Act Statement, covering not only the SSN but also other items of personal information, must make clear that the disclosure of the SSN is voluntary. If, in such instances, the individual refuses to disclose it, the element concerned must be prepared to identify him by alternate means.

§ 290a.9 Exemptions.

(a) The Director, DCAA reserves the right to designate the systems of records maintained by this agency which are to be exempted from certain provisions of the Privacy Act of 1974, and shall publish in the FEDERAL REGISTER information specifying the name of each designated system, the specific provisions of the act from which each system is to be exempted, and the reasons for each exemption of the record system.

(b) To qualify for a general exemption, as defined in the Privacy Act of

BEST COPY AVAILABLE

1974, the system of records must be maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities. Such system of records must consist of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and containing only identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any state of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) To qualify for a specific exemption, as defined by the Privacy Act of 1974, the system of records must be:

(1) Specifically authorized under criteria established under an Executive Order to be kept classified in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Investigatory material compiled for law enforcement purposes, other than material covered under a general exemption; however, an individual shall not be denied access to information which has been used to deny him a right or privilege unless disclosure would reveal a confidential source. The Security Officer, DCAA, shall establish procedures governing the granting of confidentiality;

(3) Maintained in connection with providing protective service to the President of the United States or other individuals protected pursuant to 18 U.S.C. 3056.

(4) Used only to generate aggregate data or for other similarly evaluative or analytic purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals except for the disclosure of a census record permitted by 13 U.S.C. 8.

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. The Security Officer, DCAA, shall establish procedures governing the granting of confidentiality;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the Armed Services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(d) Section 5 U.S.C. 552a (j) and (k) authorize an agency head to exempt certain systems of records or parts of certain systems of records from some of the requirements of the act. All systems of records maintained by the Defense Contract Audit Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 USC 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972 (37 FR 10053, May 19, 1972) and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified.

[40 FR 55538, Nov. 28, 1975, as amended at 42 FR 35157, July 8, 1977]

§ 290a.10 Systems of records.

(a) (1) Each DCAA element shall maintain in its records systems only such personal information as is relevant and necessary to accomplish a purpose or mission required by statute or Executive Order of the President.

(2) Each element shall identify the specific provision of law, or Executive Order, which provides authority for the maintenance of information in each system of records.

(3) Statutory or regulatory authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient to have. The proponent of each system of records will evaluate each category of information in a system for both necessity and relevance. In performing this evaluation the following points will be considered:

(i) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(ii) Specific adverse consequences of not collecting each category of information.

(iii) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(iv) Length of time that the information is needed and, where appropriate, techniques for purging parts of the record.

(v) Financial cost of information maintenance compared to risk or adverse consequence of not maintaining it.

(vi) Necessity and relevance of this information to all individuals included in the system.

(4) Collection will be discontinued for each category or item of information which after the above evaluation does not appear to be reasonably justifiable. Moreover, such information will be withdrawn and destroyed provided it can be economically segregated from necessary and relevant information.

(5) The evaluation described above will be performed by each proponent of a system of records:

(i) During the design phase of a new system of records or a change in an existing system of records.

(ii) Annually, prior to republication of all system notices in the Federal Register.

(b) (1) The Privacy Act requires that a notice of the existence of each system of records, as defined in § 290a.5, be published in the Federal Register. Initial system notices will be submitted to the Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)) by the Records Administrator.

(2) Notices for new systems must be published in the Federal Register for public comment at least 30 days before the system may be legally implemented. The proposed notices shall be submitted to the Records Administrator at least 90 days before the proposed implementing date. The Records Administrator shall submit the proposed system notices to OASD(C) 60 days before the proposed implementing date.

(3) (i) The following proposed changes to an existing system must be published in the Federal Register for public comment at least 30 days before the changes are implemented:

(A) Those which expand the categories of individuals on whom records are maintained.

(B) Those which add new categories or records to the system.

(C) Those which add new categories to the sources.

(D) New or changed routine uses which involve disclosure to a new category of recipient.

(E) Changes in procedures governing access.

(ii) Notices of proposed changes to existing systems will be submitted to the Records Administrator 90 days before implementation.

(4) Changes in records systems not stated in paragraph (b)(3)(i) of this section, do not require advance publi-

cation, but must be submitted for inclusion in the annual consolidated listing of records systems. Accordingly, each DCAA element shall establish procedures to ensure that all such changes are forwarded to the Records Administrator by May 1 of each year for submission to the Office of the Assistant Secretary of Defense (Comptroller) by May 31 for annual publication in the FEDERAL REGISTER.

(5) Concurrently with paragraphs (b) (3) and (4) of this section, the Office of the Assistant Secretary of Defense (Comptroller) shall provide the Office of Management and Budget and the Privacy Protection Study Commission advance notice of proposals to establish new systems or to change routine uses of existing system.

(6) The Records Administrator shall ensure that information contained in each system notice, as published in the FEDERAL REGISTER, is incorporated in DCAA Manual 5015.1, Files Maintenance and Disposition. DCAA elements shall take immediate action to either publish a system notice, or discontinue any system of records not contained in the Files Maintenance and Disposition Manual.

(c) (1) Records used by DCAA elements in making determinations about an individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

(2) Prior to disseminating any record about an individual to any person other than a Federal agency, unless the dissemination is made pursuant to the Freedom of Information Act, reasonable efforts will be made to ensure that such records are accurate, complete, timely, and relevant for agency purposes.

(d) Maintenance of a system of records describing how individuals exercise rights guaranteed by the First Amendment is prohibited unless expressly authorized by Federal statute or by the individual concerned, unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(e) The head of each DCAA element shall assure that persons, including Government contractors or their employees, involved in the design, development, operation, maintenance, or control of any system of records, as defined in § 290a.5, are informed of all requirements to protect the privacy of the individuals who are subjects of the records. The following sanctions should be emphasized to personnel:

(1) There are criminal penalties for knowingly and willfully disclosing a record about an individual without the written consent or the written request of that individual, or unless disclosure is for one of the reasons listed in § 290a.7.

(2) The agency may be subject to civil suit for failure to comply with the Privacy Act of 1974.

(f) (1) Each DCAA element shall establish administrative and physical safeguards to protect each system of records from unauthorized or unintentional access, disclosure, modification, or destruction. These safeguards shall apply to systems of records, in whatever medium in which personal information is processed or stored. Such safeguards shall be tailored to the requirements of each system of records.

(2) Access to personal information shall be restricted to those persons whose official duties require access and the individual concerned and in accordance with § 290a.7.

(3) Each DCAA element shall ensure that all persons whose official duties require access to or processing and maintenance of personal information are trained in the proper safeguarding and use of such information.

(4) Personal records and documents shall be stored so as to reasonably preclude unauthorized disclosure.

(5) Disposal of records containing personal information which are no longer required will be accomplished in such a manner that will prevent the contents from being disclosed, e.g., tearing the record into pieces to prevent reconstruction, burning, or in the case of magnetic tapes, by degaussing.

§ 290a.11 Annual report.

(a) Each DCAA Region shall prepare an annual report for the preceding calendar year on its implementation of the Privacy Act.

(b) Seven copies of the report shall be furnished to the Records Administrator by March 15 of each year for transmittal in six copies to the OASD(C) by March 31 of each year.

(c) The annual report shall contain the following:

(1) A brief management summary of the status of actions taken to comply with the act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

(2) A summary of major accomplishments; i.e., improvements in information practices and safeguards.

(3) A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities.

(4) A list of systems which are exempted during the year from any of the operative provisions of this law permitted under the terms of subsections (j) and (k) of the Privacy Act of 1974, whether or not the exemption was obtained during the year, the number of records in each system exempted from each specific provision and reasons for invoking the exemption.

(5) A brief summary of changes to the total inventory of personal data systems subject to the provisions of the act, including reasons for major changes, e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

(6) A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

(7) Any available data, or estimates, of the cost of administering the Privacy Act of 1974.

PART 291—AVAILABILITY TO THE PUBLIC OF DEFENSE NUCLEAR AGENCY INFORMATION

Sec.

291.1 Purpose.
291.2 Policy.
291.3 Responsibilities.
291.4 Procedures.
291.5 Information which will be available on request.
291.6 Material which may be withheld from public disclosure.
291.7 For official use only markings.
291.8 Headquarters, DNA and DNA command designated offices.
291.9 Rates for copying and research.
291.10 Identification and marking "For Official Use Only".

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502.

SOURCE: 40 FR 27026, June 26, 1975, unless otherwise noted.

§ 291.1 Purpose.

To establish policies and procedures for making DNA information available to the public. This instruction implements 32 CFR Part 286.

§ 291.2 Policy.

(a) It is DNA policy to make maximum response to public requests for information concerning its operations and activities, consistent with national security objectives. When considering requests for information, all DNA elements will abide by the policy and procedures of this and other applicable DNA Instructions.

(b) A request for a record under the Freedom of Information Act (FOIA) may be denied only upon determining that:

(1) The record is subject to one or more of the exemptions set forth in § 291.6, and a significant and legitimate governmental purpose is served by withholding.

(2) The record cannot be found because it cannot be described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(3) The requester has unreasonably failed to comply with the procedural requirements imposed by this part.

§ 291.3 Responsibilities.

(a) The Director and heads of DNA components (Commander, FC, and Director, AFRRI) are responsible for determining, based on current Directives and Instructions, what information in their custody may be released to the public. However, the Director has the sole responsibility for withholding any information requested under the FOI Act.

(b) Each component will designate a representative to reply to all requests for public information. Replies should provide the requester as much assistance as possible in locating the document or information requested to include forwarding the request to the proper agency/source.

(c) Components will notify the Director, DNA, ATTN: PAO (FOI Act) of all written requests for records under the FOI Act. When components release information under this FOI Act, they will forward copies of the request and action taken to HQ DNA, ATTN: PAO, for file and compliance with the annual report to Office, Assistant Secretary of Defense (Public Affairs) (OASD(PA)). In all recommendations for denial of a request for a record, the components will immediately forward the request to Director, DNA, ATTN: PAO (FOI Act), and include an explanation of the substantive justification for withholding the information.

(d) [Reserved]

(e) An FOI Council will be appointed on orders at HQ, DNA to review all requests for records that a representative recommends not be released or is doubtful regarding releasability of the record. The Council will consist of the Assistant to the Deputy Director for Science and Technology (Theoretical Research) as Chairman; the Chief, Joint Atomic Information Exchange Group; and Director, Intelligence and Security Directorate as members; the Public Affairs Officer (PAO), HQ DNA, as the Secretary/Recorder; and the General Counsel (GC) HQ DNA, as legal advisor. The FOI Council will make its recommendations on such initial requests for records under the FOI Act directly to the Deputy Director (Operations and Administration). Recommendations upon appeals from initial denials of requests for records will be made directly to the Director, DNA.

(f) The PAO, HQ DNA is the point of contact between DNA and the OASD (PA) Freedom of Information Office (FOIO). The PAO, HQ DNA, is responsible:

(1) For advising OASD(PA) (FOIO) of any DNA denial of a request for records or appeals that may affect another DoD component.

(2) For placing in the FEDERAL REGISTER a current description for the guidance of the public, of where, how, and by what authority the DNA performs any of its functions. Components will provide the PAO with appropriate information upon request.

(3) To insure publication of the list of DNA indices in the FEDERAL REGISTER. Changes to the indices will be kept current on a quarterly or sooner basis by the appropriate DNA component/staff/directorate.

(g) The General Counsel, HQ DNA, shall insure uniformity in the legal position and interpretation by DNA of this Part, and coordinate with DoD General Counsel as necessary on all denials of requests for records that are likely to lead to litigation.

(h) The Comptroller, HQ DNA, will insure that fees are properly received and forwarded to the Treasury of the United States.

(i) Any request from a member of Congress or for information under the control of Congress or a Congressional Committee will be processed in accordance with current DNA Instructions.

(j) When requests for a record have other government agency interest (i.e., DNA is not the original classifier in the case of classified records), the representative will insure that all actions are coordinated with those agencies or officials, and there is written agreement before determining what final action will be taken. The HQ, PAO, in coordination with the GC, will notify the Director and OASD(PA) of the coordination and actions taken.

(k) Commander, FC, Director, AFRRI, and Directors and Chiefs of HQ DNA staff elements will insure that all DNA personnel who act in FOI matters will be familiar with all cited references, procedures and contents of this instruction prior to undertaking action on a request involving the FOI Act. A refresher briefing will be conducted by the PAO on an annual basis.

§ 291.4 Procedures.

(a) Any member of the public desiring information should be able to call or write any DNA element and be referred promptly to the representative designated for answering public inquiries. The current designated offices, with telephone numbers and addresses, is listed in § 291.8.

(b) Due to security requirements at HQ DNA and its components, there may not be a reading room for a member of the public to use. However, the representative will assure ready access to the categories of documents requested (i.e., contract announcements, court rulings, etc.) and a place where the requester may review them.

(c) Once the requester has clearly identified the record or information desired (must be in writing if request is based on the FOI Act), the representative will obtain copies of the document. If a search is required for the information, the representative will so inform the requester within 10 working days, giving him the approximate time the information will be available and the cost. Rates for copying material or for researching a subject are in § 291.9. A record will not be released prior to receipt of fees.

(d) The representative's action on each request received under the FOI Act includes attached DNA Form 524; assigning a request number (i.e., 75-1, for year and request number, add FC for Field Command and AF for AFRRI); obtaining the complete information requested; forwarding copies of the request and action taken to HQ DNA, ATTN: PAO (FOI Act); and receiving payment for copying or research charges. The requester should pay by check or money order, payable to "Treasurer of the United States." All collections will be delivered daily to the component's servicing Finance and Accounting Officer. If daily delivery is impracticable, delivery may be made on a weekly basis. With each delivery of funds, the Finance and Accounting Officer will prepare a DD Form 1131 (Cash Collection Voucher), showing the name of the remitter, purpose of the remittance, account or fund to be credited, and the amount. Collections of scheduled fees and charges will be deposited in accordance with paragraph entitled "collections", § 291.9.

(e) A proposed initial denial of a request for records based on the FOI Act must first be reviewed by the FOI Council. The original request and supporting documents to justify withholding of the records are to be forwarded by the HQ PAO to the Council. The Council's recommendations and all procedures are documented and forwarded to the Deputy Director (Operations and Administration) for his decision. The requester must be notified within the time limits set forth in paragraph (f) of this section, and advised of his right to appeal a denial of his request to the Director, DNA. The DNA, PAO will advise OASD (PA) of any denial action taken if circumstances suggest the potential for public controversy or litigation.

(f) The time limitations for responding to legitimate requests for records imposed by the amendments to the FOI Act are:

(1) Initial determination and response are made normally within 10 working days after the request is received by a representative. Time does not start, however, until full assurance is received that the requester is willing to reimburse DNA for any costs incurred for search or duplication.

(2) If additional time is needed, the requester must be notified within the above 10 day period and be advised of the anticipated date of response which may not exceed 10 additional working days.

(3) If a request for a record is denied and the requester appeals the decision to the Director, final determination on the appeal shall normally be made within 20 working days of receipt of the appeal. Additional time needed in an appeal action cannot exceed 10 working days, but only if additional time was not used in responding to the initial request.

(4) The representative will notify the requester within 10 working days if the request has to be forwarded to another agency for action.

(g) The initial denial of all or part of a request for a record under the FOI Act will be in writing to the requester and include all information as to the procedure undergone to arrive at that decision: directives, statutes, public law or other regulations authorizing prohibition of release of the record; a statement as to the requester's right to appeal the decision to the Director, DNA; the name and title of the Director, DNA; and if appropriate, advise the requester of his optional right to seek declassification review of a classified record more than 10 years old.

(h) An appeal to the Director under the FOI Act of an initial decision to withhold all or segregable portions of a record, will be referred through the PAO to the FOI Council. The Council, under the advisement of the General Counsel and if applicable, OASD(PA), will review the basis for the appeal and will recommend to the Director, a final determination. The Director will make the final decision and forward an answer to the requester within 20 working days. If the appeal is denied, the Director will notify the requester of the right to judicial review of the decision.

(i) Requests for records originating from the Directorate for Freedom of Information, OASD(PA), will be directed to the HQ DNA, PAO for action. The PAO will follow the procedures for responding to OASD(PA) as outlined in 32 CFR Part 286.

(j) The PAO will keep all files of actions taken regarding requests under the FOI Act and submit an annual report to OASD(PA) per 32 CFR Part 286.

§ 291.5 Information which will be available on request.

Subject to the exemptions in § 291.6, the following information in the possession of DNA shall be made available upon the written request of any person.

(a) Final opinions (including concurring and dissenting opinions) and orders in adjudications that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations of less than general applicability affecting the public but not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions, or portions thereof, which establish DNA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on the tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of DNA. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit and inspection purposes or those which prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals concerning munitions, equipment, and systems.

(3) Technical documents/information within guidelines stated in DoD Directive 5200.20.

(d) Identifying details which, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from any final opinion, order, statement of policy, interpretation, staff manual, or instruction, made available for inspection and/or copying. In every such case, the justification for the deletion must be fully explained in writing.

(e) HQ DNA and its components shall maintain indices of material issued, adopted or promulgated by DNA after July 4, 1967, which is made available or published under this section.

(1) The indices will be arranged topically or by descriptive words, so that members of the public may be able to locate final opinions, orders, statements of policy, interpretations, staff manuals, technical documents, or instructions by subject, rather than by case name or by numbering system. Case name and numbering arrangements will be included in the index for purposes of the convenience of DNA.

(2) Copies of DNA indices will be provided to a requester through the DNA information representatives

listed in § 291.8, at a cost not exceeding the direct cost of duplication. The indices will also be made available for public inspection and copying at the listed designated locations.

(3) No order, opinion, statement of policy, interpretation, staff manual, or instruction issued, promulgated, or adopted after July 4, 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as precedent against any member of the public unless he has actual and timely notice of its terms. If the order, opinion, statement of policy, interpretation, staff manual, or instruction was issued, promulgated, or adopted before July 4, 1967, it need not be indexed but must be made available.

(4) In determining whether an order, opinion, statement of policy, interpretation, staff manual, or instruction is likely to be used or relied upon as precedent, the primary test shall be whether it is intended to provide binding guidance for decisions or evaluations by subordinates or for future decisions by the same authority in adjudications of cases affecting the public, where similar facts or issues are presented.

§ 291.6 Material which may be withheld from public disclosure.

Documentary material may be withheld from public disclosure if it comes within a specific exemption as listed below. Even exempted material should be made available upon request of any member of the public if, in the judgment of the releasing authority, no significant purpose would be served by withholding it from him under an applicable exemption and its release is not inconsistent with current policies. The following types of records may be withheld from public disclosure:

(a) National Defense Information: Those that are properly and currently classified in the interest of national defense or foreign policy.

(b) Statutory Restricted Information: Those containing information which statutes authorize or require be withheld from the public.

(1) For trade, technical, and financial information provided in confidence by businesses.

(2) National Security Agency information.

(3) Any records containing information relating to inventions which are the subject of patent applications on which Patent Secrecy Orders have been issued.

(4) Restricted Data and Formerly Restricted Data.

(5) Records classified by a foreign government.

(6) Technical documents published by DNA that are controlled within the guidelines of DoD Directive 5200.20.

(c) Privileged Information: Those records containing trade secrets or commercial or financial information which a component receives from a person with the understanding that it will be retained on a privileged or confidential basis in accordance with customary handling of such records. Such records are those the disclosure of which would cause substantial harm to the competitive position of the person providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate governmental interest. Examples include records which contain:

(1) Information customarily considered privileged or confidential under the rules of evidence in the Federal courts, such as information coming within the doctor-patient, lawyer-client, and priest-penitent privileges.

(2) Commercial or financial information received in confidence in connection with loans, bids, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.

(3) Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, if received in confidence from a contractor or potential contractor.

(4) Information such as research data, formulas, designs, drawings, and other technical data and reports which:

(i) Are significant as items of valuable property acquired in connection with research, grants, or contracts;

(ii) Would likely be held in confidence if owned by private parties.

(5) Personal statements given in the course of inspections or investigations, where such statements are received in confidence from the individual and retained in confidence.

(d) Internal communications within and among agencies/components and offices/directorates.

(1) Those containing rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or to the internal practices of DNA elements if their release would hinder the function of DNA.

(i) Staff papers containing staff advice, opinions or suggestions.

(ii) Information received or generated by a component preliminary to a decision or action including draft versions of documents where premature disclosure would interfere with the authorized purpose for which the records were created.

(iii) Advice, suggestions or reports prepared on behalf of DNA by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed by a component to obtain advice and recommendations, or by individual consultants.

(iv) Those portions of DNA evaluations of contractors and their products which contain recommendations or advice by government employees about the contractor or product.

(v) Advance information on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions when such information would provide undue or unfair competitive advantage to private personal interests.

(vi) Records which are exchanged among agency personnel or within and among components or agencies preparing for anticipated legal proceedings before any Federal, State, or military court or before any regulatory body.

(vii) Reports of inspections, audits, investigations, or surveys which pertain to safety, security, or the internal management, administration, or operation of the Department of Defense or one of its components.

(2) If any such intra- or inter-agency record, or reasonably segregable portion of such record would routinely be made available through the discovery process in the course or litigation with the agency (i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing), then it should not be withheld from the general public. If, however, the information would only be made available through the discovery process by special order of the court based on the particular needs of a litigant balanced against the interests of the agency in maintaining its confidentiality, then the record or document should not be made available to a member of the general public.

(3) Factual records or segregable portions of intra- or inter-agency memorandums or letters are routinely made available through discovery, and should, therefore, be made available to a requester unless the factual material is otherwise exempt from release.

(4) A direction or order from a superior to a subordinate though contained in internal communication, is generally not withholdable from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters that would compromise the decision-making process.

(5) An internal communication concerning an event or decision which has subsequently been made a matter of public record, or was among officers or employees (or members of the Armed Forces) who no longer are actively employed by DNA, should normally be made available to a requester unless it is determined that because of special circumstances release would prejudice the current decision-making process.

(e) Personnel and Medical Information: Information in personnel and medical files, as well as information in similar files that, if disclosed to a member of the public, would result in a clearly unwarranted invasion of personal privacy as determined by 5 U.S.C. 552a (The Privacy Act).

(1) Examples of files similar to personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment and the eligibility of individuals, civilian, military or industrial, for security clearances.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration should be given, to the stated or assumed purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened.

(3) When the only basis for withholding information is protection of the personal privacy of an individual who is the subject of the record, the information should not be withheld from him or from his designated legal representative. A clearly unwarranted invasion of the privacy of others discussed in that record may, however, constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record.

(4) An individual's personnel, medical, or similar files may be withheld from him or from his designated legal representative only to the extent consistent with 5 U.S.C. 552a.

(f) Investigatory Information: Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders, or regulations validly adopted pursuant to law.

(1) But only to the extent that their release would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source;

(v) Disclose confidential information furnished only from a confidential source obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(vi) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to insure their effectiveness;

(vii) Endanger the life or physical safety of law enforcement personnel.

(2) Examples include: (i) Statements of witnesses and other material based on the information developed during the course of the investigation and all materials prepared in connection with related government litigation of adjudicative proceedings.

(ii) The identity of firms or individuals suspended from contracting with DNA or being investigated for alleged irregularities when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of:

(*a*) A criminal investigation by a criminal law enforcement agency or office within a component; or

(*b*) A lawful national security intelligence investigation conducted by an authorized agency or office within a component for the purpose of obtaining:

(*1*) Affirmative or counterintelligence information.

(*2*) Background investigation information needed to determine suitability for employment or eligibility for access to classified information.

(*3*) The right of individual litigants to investigate records currently available by law is not diminished.

(*4*) When the subject of an investigative record is the requester of that record it may be withheld only in accordance with regulations implementing 5 U.S.C. 552a.

§ 291.7 For official use only markings.

All DNA components will follow the guidance at § 291.10 when determining if a document should be considered "For Official Use Only" and marked accordingly.

§ 291.8 Headquarters, DNA and DNA Command designated offices.

(a) Headquarters, DNA. Public Affairs Officer, Headquarters, Defense Nuclear Agency, Washington, DC 20305. Duty Telephone: (Area Code 202) 325-7095.

BEST COPY AVAILABLE

(b) Field Command, DNA, Security Specialists, Support Directorate, Headquarters, Field Command, Defense Nuclear Agency, Kirtland AFB, New Mexico 87115. Duty Telephone: (Area Code 505) 264-1314.

(c) Armed Forces Radiobiology Research Institute. Administrative Officer, Armed Forces Radiobiology Research Institute, National Naval Medical Center, Bethesda, Maryland 20014. Duty Telephone: (Area Code 201) 295-0227.

§ 291.9 Rates for copying and research.

Following are the rates for copying, researching, and certifying records requested under this part.

(a) *Duplication.* (1) Publications, forms and reports: Shelf stock of printed or microfiche medium (requesters may be furnished more than one copy of a publication or form if it does not deplete stock levels below projected planned usage).

Minimum fee, per request	$2.00
plus	
Forms, per copy	.05
Publications, per printed page	.01
Microfiche, per fiche	.06
Reports, per printed page	.05

(2) Office copy reproduction (when shelf stock is not available).

Minimum charge up to 6 reproduced pages	$2.00
Minimum charge 1 fiche	5.00
Each additional page	.05
Each additional fiche	.10

(3) Other issuances.

Minimum charge up to 6 pages	$2.00
Each additional page	.05

(b) *Search.*

Clerical search, per hour	$5.50
Minimum charge	2.75
Professional search (includes computer programmer time and review to determine whether a record comes within the scope of a request) per hour	11.00
Minimum charge	5.50

(c) *Computer service charges.* Computer service charges will be based on actual computer configuration used and be based on direct costs only of the Central Processing Unit, plus Input/Output Devices, plus Memory Capacity. Transportation costs of records and personnel arising from searches for requesting reports will be charged at actual cost.

(d) *Audiovisual documentary material.* Service charges for audiovisual documentary materials will include clerical and professional search fees as listed above as well as the direct costs of reproducing the photography or tape and shipping or mailing charges. Audiovisual materials provided a requester under provisions of this part need not be in reproducible format or quality.

(e) *Waiver of fees.* (1) In general, charges shall be waived or reduced when it is determined that release of a requested record primarily benefits the general public and, therefore, is in the public interest. Examples of common situations in which such a determination may be made include:

(i) The recipient of the benefits is engaged in a nonprofit activity designed for public safety, health or welfare;

(ii) Payment of the full costs or fee by a state, local government or nonprofit group would not be in the interest of the program;

(iii) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity;

(iv) The request emanates from a representative of the public information media seeking a reasonable number of records.

(2) A refusal to waive charges by the official responsible for the initial decision on the request for the record may be appealed to the Director, DNA for purposes of final appeal.

(f) *Collections.* (1) Normally, collection of charges and fees will be made in advance of rendering the service. In some instances, it may be more practical to collect charges and fees at the time of conveying the service or property to the recipient, but only in those instances where the request specifically states that whatever cost involved will be acceptable or acceptable up to a specified limit that covers anticipated costs.

(2) Collection of scheduled fees and charges will normally be deposited to

BEST COPY AVAILABLE

Miscellaneous Receipts of the Treasury.

(3) Search fees are assessable even when no records responsive to the request, or no records not exempt from disclosure are found, provided the requester is advised of the requirement at the time the estimated charges are presented to the requester for approval and he agrees to incur the costs of search.

§ 291.10 Identification and marking "FOR OFFICIAL USE ONLY".

(a) Records which are not classified but which at the time of their origination are authorized to be withheld from general public disclosure under § 291.6, and which for a significant and legitimate governmental purpose should not be given general circulation, shall be considered as being "FOR OFFICIAL USE ONLY" (FOUO). No other record may be considered as being "FOR OFFICIAL USE ONLY."

(b) A record that is considered "FOR OFFICIAL USE ONLY" may be marked "FOR OFFICIAL USE ONLY" when such marking is deemed necessary or desirable to ensure that all persons having access to the record are aware that it should not be publicly released and should not be handled indiscriminately. Individual folders, records, and files covering specific kinds of subject matter normally falling within the exemptions of § 291.6, such as personnel and medical files, bids, proposals, and the like, which are covered by rules and regulations specifying what may be released publicly, do not require the "FOUO" marking unless handled under circumstances where marking is desirable to ensure protection of the information involved.

(1) The marking may not be used on records or portions of records which are classified for security reasons, but, if otherwise proper under this part, may be applied to information or material which has been declassified.

(2) The marking may not be employed as a less stringent security designation under conditions where classification is not warranted.

(3) Information contained in a technical document for which a determination has been made that a distribution statement is appropriate shall not be marked "FOUO."

(c) Material which is considered as being "FOR OFFICIAL USE ONLY" must be safeguarded from general disclosure irrespective of whether the material is physically marked with the term "FOR OFFICIAL USE ONLY."

(d) Whenever necessary to assure proper understanding, or appropriate as a means of facilitating segregation of exempt information in a lengthy record, individual paragraphs which contain FOUO information shall be marked with the symbol "FOUO." In classified documents, this marking should be applied only to paragraphs which contain FOUO Information and do not contain classified information.

PART 291a—DEFENSE NUCLEAR AGENCY PRIVACY PROGRAM

Sec.
291a.1 Purpose.
291a.2 Applicability.
291a.3 Designations.
291a.4 Responsibilities
291a.5 Exemptions.

AUTHORITY: Pub. L. 93-597, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 51 FR 12312, Apr. 10, 1986, unless otherwise noted.

§ 291a.1 Purpose.

This rule implements the provisions of the Privacy Act of 1974, as amended, and adopts the policies and procedures as set forth by the Department of Defense Privacy Program, 32 CFR Part 286a.

§ 291a.2 Applicability.

The provisions of this rule apply to Headquarters, Defense Nuclear Agency (HQDNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

§ 291a.3 Designations.

The General Counsel, HQDNA, is designated as the agency Privacy Act Officer. The Privacy Act Officer is the principal point of contact for privacy matters and is the agency Initial

Denial Authority. The Director, DNA, is the agency Appellate Authority.

§ 291a.4 Responsibilities.

(a) The Director, DNA is responsible for implementing the agency Privacy Program in accordance with the specific requirements of 32 CFR Part 286a.

(b) The Privacy Act Officer is responsible for monitoring and ensuring agency compliance with the DoD Privacy Program in accordance with 32 CFR Part 286a.

(c) Agency component and element responsibilities are set forth in DNA Instruction 5400.11A,[1] 3 March 1986.

[51 FR 12312, Apr. 10, 1986, as amended at 51 FR 15479, Apr. 24, 1986]

§ 291a.5 Exemptions.

(a) HDNA 007 Security Operations;

(1) *Specific exemption.* Portions of this system of records are exempt from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(4) (G), (H), (I); and (f).

(2) *Authority.* 5 U.S.C. 552a(k)(5).

(3) *Reason.* To protect the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to 27 September 1975, under an implied promise that identity of the source would be held in confidence.

(b) In accordance with 32 CFR 286a.50(c), the blanket exemption for classified material is applicable to any agency system of records.

PART 292—AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DIA) INFORMATION

Sec.

292.1 Purpose.
292.2 Applicability.
292.3 Basic policy.
292.4 Specific policy.
292.5 How the public submits requests for records.
292.6 Schedule of fees.
292.7 Material that may be withheld from release.
292.8 Filing an appeal for refusal to make records available.
292.9 Responsibilities.
292.10 Uniform agency fees for search and duplication under the Freedom of Information Act amendments (Pub. L. 93-502).

AUTHORITY: 5 U.S.C. 301, 552, as amended by the Act of Nov. 21, 1974 (Pub. L. 93-502).

SOURCE: 40 FR 7292, Feb. 19, 1975, unless otherwise noted.

§ 292.1 Purpose.

This part implements the "Freedom of Information Act," (FOIA) 5 U.S.C. 552, as amended by Pub. L. 93-502, within the DIA and outline policy governing release of records to the public.

§ 292.2 Applicability.

The provisions of this part apply to all elements of the DIA and governs the release of records of these elements. This regulation is effective as of February 19, 1975.

§ 292.3 Basic policy.

(a) Upon receipt of a written request, the DIA will release to the public records concerning its operations and activities which are rightfully public information. Generally, information, other than that exempted in § 292.7, will be provided to the public. The following policy will be followed in the conduct of this program:

(1) The provisions of the Freedom of Information Act (5 U.S.C. 552, as amended), as implemented by Part 286 of this chapter and this part, will be supported in both letter and spirit.

(2) Requested records will be withheld only when a significant and legitimate governmental purpose is served by withholding them. Records which require protection against unauthorized release in the interest of the national defense or foreign relations of the United States will not be provided.

(3) Requests from Members of Congress will be governed by DoD Directive 5400.4,[1] from the General Ac-

---

[1] Copies may be obtained, if needed, from: HQ, Defense Nuclear Agency, Office of General Counsel, Washington, DC 20305-1000.

[1] Filed as part of original. Extra copies available from the U.S. Naval Publications and Forms Center, Attention Code 300, 5801 Tabor Avenue, Philadelphia, Pa. 19120.

counting Office by DoD Directive 7650.1,[1] and from other agencies and courts by Part 286 of this chapter.

(4) Records will not be withheld solely because their release might result in criticism of DoD or this Agency.

(5) The applicability of the Freedom of Information Act depends on the existence of an "identifiable record" (5 U.S.C. 552(a)(3)). Accordingly, if DIA has no record containing information requested by a member of the public, it is under no obligation to compile information to create such a record.

(6) The mission of DIA does not encompass regulatory or decisionmaking matters in the sense of a public use agency, therefore, extensive reading room material for the general public is not available, however, unclassified DIA regulations and related material have been placed in the joint reading room managed by DoD Public Affairs.

(b) This basic policy is subject to the exemptions recognized in 5 U.S.C. 552(b) and discussed in § 292.7. Even where release denial is authorized by 5 U.S.C. 552(b) and § 292.7, requested records will be provided if no significant and legitimate governmental purpose is served by withholding them.

§ 292.4 Specific policy.

(a) In determining whether documentary material qualifies as a "record," 44 U.S.C., 3301 will be used as a guide. This statute, which defines the word "records" for record disposal purposes, provides that:

> [It] includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government under Federal Law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein.

(1) Records are not limited to permanent or historical documents but include contemporaneous documents as well.

(2) The term "records" does not include objects or articles such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, etc., whatever their historical value or value as "evidence."

(3) Records include data stored in computers.

(4) Formulae, designs, drawings, research data, computer programs, technical data packages, and so forth are not considered "records" within the Congressional intent of 5 U.S.C. 552 as amended by Pub. L. 93-502. Because of development costs, utilization, or value, these items are considered property, not preserved for informational value nor as evidence of agency functions, but as exploitable resources to be utilized in the best interest of all the public. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of such property. Requests to inspect such material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for certain formulae.

(5) The term "For Official Use Only" will not prevent a record from being released. Use of this designation is for internal convenience only, and each record containing this designation should be examined for release on its own merit.

(b) For a record to be considered "identifiable," it must exist at the time of the request.

(c) Requesters must be reasonably specific in identifying records. DIA will make a reasonable effort to locate any records that are requested.

(d) Requests for identifiable records may be denied only when the official designated in § 292.9 determines that such denial is authorized by this regulation.

(e) Pursuant to 5 U.S.C. 552(a)(3), requesters will be charged reasonable costs incurred by DIA in searching and copying records. Charges will be in accordance with § 292.6.

(f) In appropriate circumstances, requests requiring special attention will be referred, by the Central Reference Division Library, DIA, to the Assistant Secretary of Defense (Public Affairs) (ASD (PA)) for review and evaluation.

(g) Initial availability, releasability and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA Secretariat (FOIA). If, due to unusual circumstance, additional time is needed, a written notification of the delay will be forwarded the requester within the 10 working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantiative response. The period of delay may not exceed 10 additional working days.

§ 292.5 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The request should contain at least the following information:

(1) Reasonable identification of the desired record including (if known) title or description, date and the issuing office.

(2) With respect to matters of official record concerning civilian or military personnel, the first name, middle name or initial, surname date of birth, and social security number of the individual concerned, if known.

(b) Persons desiring records should direct inquiry to:

Defense Intelligence Agency
ATTN: SC (FOIA)
Washington, D.C. 20301

§ 292.6 Schedule of fees.

Specific fees apply with respect to services rendered to the public.

(a) In general, charges may be waived when:

(1) The recipient of the benefits is engaged in a nonprofit activity designed for public safety, health or welfare.

(2) Payment of the full costs or fee by state, local government or nonprofit group would not be in the interest of the program.

(3) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(b) Normally, collection of charges and fees will be made in advance of rendering the service. In some instances, it may be more practical to collect charges and fees at the time of conveying the service or property to the recipient, but only in those instances where the request specifically states that whatever cost is involved will be acceptable or acceptable up to a specified limit that covers anticipated costs. In the absence of an agreement to pay required anticipated costs, the time for responding to a request begins on resolution of willingness to pay.

(c) The schedule of fees chargeable is contained in § 292.10.

(d) Fees must be paid in full prior to search and issuance of requested copies. If uncertainty as to the existence of a record, or as to the number of sheets to be copied or certified, precludes remitting the exact fee chargeable with the request, DIA will inform the requester of the exact amount required.

(e) Remittances will be by personal check or bank draft on a bank in the United States or by U.S. postal money order. Remittances will be made payable to the "Treasurer of the United States" and forwarded to the address listed in § 292.5.

§ 292.7 Material that may be withheld from release.

(a) Detailed guidelines for withholding information under exemptions contained in 5 U.S.C. 552 are published in 32 CFR 286.8, "Exemptions."

(b) For example, DIA is not required to release records that fall within the categories listed below:

(1) Information requiring protection in the interest of national defense or foreign policy and authorized under criteria established by Executive Order 11652 and DoD 5200.1-R [2] to be kept SECRET.

(2) Rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or internal practices of DIA and those providing management guidance to the Military Departments and the Unified and Specified Commands.

(3) Information authorized or required by statute to be withheld from the public. The authorization or re-

---

[2] Filed as part of original.

quirement may be found in the statute itself or in Executive orders or regulations authorized by, or in implementation of, the statute. Examples include:

(i) Documentary material referred to in 18 U.S.C. 1905—Trade and financial information provided in confidence by businesses (see paragraph (b)(4) of this section).

(ii) 35 U.S.C. 181-88—Records containing information relating to inventions that are the subject of patent applications for which Patent Secrecy orders have been issued.

(4) Personnel and medical files and similar files the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

(5) DIA will also withhold information which has been received from anyone, including an individual, a foreign nation, an international organization, a State or local government, a corporation, or any other organization, with the understanding, expressed or implied, that the information will be retained on a privileged or confidential basis under criteria contained in Executive Order 11652 and DoD 5200.1-R.[2]

(6) Exempt portions of a record may be deleted and the remaining reasonably segregable portions of the record released to the requester when the meaning of these portions is not distorted and it can be reasonably assumed that a skillful and knowledgeable person could not reconstruct the exempt information.

§ 292.8 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Appeals should be addressed to:

Director
Defense Intelligence Agency
ATTN: SC (FOIA)
Washington, D.C. 20301

(b) Final determination on appeals shall normally be made within 20 working days of the receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request.

(c) When an appeal is denied, the requester will be apprised of the following:

(1) Applicable exemptions and the significant and legitimate governmental purpose served by the denial.

(2) Name, and title of position of the official responsible for the denial and of the provision for judicial review of the denial.

(3) When the denial is based upon security classification, the requester shall be advised of his optional right to seek declassification of the record by the Interdepartmental Classification Review Committee established pursuant to Executive Order 11652, March 8, 1972, in lieu of immediate judicial review.

§ 292.9 Responsibilities.

When a request for release of material is received the following will apply:

(a) The Secretariat (SC):

(1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible official for all initial denials of access to the public.

(b) The Reference Library Branch (DS-4A), Central Reference Division, Directorate for Support:

(1) Acts as the responsible operating office for all Agency actions related to the Freedom of Information Act.

(2) Drafts and transmits responses on:

(i) The release of records and/or information.

(ii) Obtaining supplemental information from the requester.

(iii) Informing the requester of any fees required.

(iv) The transfer to another component or agency of the initial request.

(3) Fulfills the annual reporting requirement and maintains appropriate records.

(4) Refers unusual or precedent-setting requirements to ASD (PA).

---

[2] Filed as part of original.

(5) Drafts for SC:

(i) Notification of an extension of response time.

(ii) The denial of access to the record.

(c) All DIA Elements:

(1) When identified by DS-4A as the Office of Primary Interest (OPI):

(i) Review records for possible public release within the time constraints assigned.

(ii) Prepare a documented response in all cases of nonrelease.

(2) All employees are required to read this part to insure familiarity with the requirements of the Freedom of Information Act as implemented.

(d) General Counsel (GC);

(1) Insures uniformity in the Freedom of Information Act legal positions within DIA and with DoD.

(2) Secures coordination with the DoD General Counsel on denials of public requests.

(3) Acts as the focal point in all judicial actions.

(4) Reviews all initial and final denials.

(e) Chief of Staff (CS/DP):

(1) Exercises overall staff supervision of the Freedom of Information Act activities of the Agency.

(2) Acts as the responsible official for all denials of appeals.

§ 292.10 Uniform agency fees for search and duplication under the Freedom of Information Act amendments (Pub. L. 93-502).

General fees:	
Minimum fee per request plus	$2.00
Forms, per copy	.05
Publications, per printed page	.01
Microfiche, per fiche	.06
Reports, per printed page	.05
(Examples: Cost of 20 forms, $3.00, cost of a printed publication with 100 pages, $3.00, cost of a microfiche publication consisting of 10 fiche, $2.60.)	
Office copy reproduction (when shelf stock is not available):	
Minimum charge up to six reproduced pages	2.00
Minimum charge, first fiche	5.00
Each additional page	.05
Each additional fiche	10
Other issuances:	
Minimum charge up to six pages	2.00
Each additional page	.05
Search:	
Clerical search, per hour	5.50
Minimum charge	2.75
Professional search (includes computer programmer time and review to determine whether a record comes within the scope of a request), per hour	11.00
Minimum charge	5.50

Computer service charges will be based on actual computer configuration used and be based on direct costs only of the Central Processing Unit plus Input/Output Devices plus Memory Capacity.

PART 292a—PRIVACY ACT OF 1974

Sec.

292a.1 Authority.
292a.2 Purpose.
292a.3 Scope.
292a.4 Definitions.
292a.5 Procedures for requests pertaining to individual records in a record system.
292a.6 Times, places, and requirements for identification of individuals making requests.
292a.7 Disclosure of requested information to individuals.
292a.8 Special procedures: Medical records.
292a.9 Request for correction or amendment to record.
292a.10 Agency review of request for correction or amendment of record.
292a.11 Appeal of initial adverse Agency determination for access, correction or amendment.
292a.12 Disclosure of record to person other than the individual to whom it pertains.
292a.13 Fees.
292a.14 General exemptions. [Reserved]
292a.15 Specific exemptions.

AUTHORITY: Privacy Act of 1974 (Pub. L. 93-579, sec. 3(f) of 5 U.S.C. 552a).

SOURCE: 43 FR 31129, July 20, 1978, unless otherwise noted.

§ 292a.1 Authority.

Pursuant to the requirements of section 533 of Title 5 of the United States Code, the Defense Intelligence Agency promulgates its rules for the implementation of the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a (f) and (k).

§ 292a.2 Purpose.

(a) To promulgate rules providing procedures by which individuals may exercise their rights granted by the act to: (1) Determine whether a Defense Intelligence Agency system of records contains a record pertaining to themselves; (2) be granted access to all or portions thereof; (3) request administrative correction or amendment of such records; (4) request an accounting of disclosures from such records; and (5) appeal any adverse determination for access or correction/amendment of records.

(b) To set forth Agency policy and fee schedule for cost of duplication.

(c) To identify records subject to the provisions of these rules.

(d) To specify those system of records for which the Director, Defense Intelligence Agency, claims an exemption.

§ 292a.3 Scope.

(a) Any individual who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States may submit an inquiry to the Defense Intelligence Agency.

(b) These rules apply to those system of records: (1) Maintained by the Defense Intelligence Agency; (2) for which the Defense Intelligence Agency prescribes the content and disposition pursuant to statute or executive order of the President, which may be in the physical custody of another Federal agency; (3) not exempted from certain provisions of the act by the Director, Defense Intelligence Agency.

(c) The Defense Intelligence Agency may have physical custody of the official records of another Federal agency which exercises dominion and control over the records, their content, and access thereto. In such cases, the Defense Intelligence Agency maintenance of the records is considered subject to the rules of the other Federal agency. Except for a request for a determination of the existence of the record, when the Defense Intelligence Agency receives requests related to these records, the DIA will immediately refer the request to the controlling Agency for all decisions regarding the request and will notify the individual making the request of the referral.

(d) Records subject to provisions of the act which are transferred to the Washington National Records Center for storage shall be considered to be maintained by the Defense Intelligence Agency. Disclosure from such records—to other than an element of the Defense Intelligence Agency—can only be made with the prior approval of the Defense Intelligence Agency.

(e) Records subject to provisions of the act which are transferred to the National Archives shall be considered to be maintained by the National Archives and are no longer records of the Agency.

§ 292a.4 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part:

(1) The term "Act" means the Privacy Act of 1974. Pub. L. 93-579, 5 U.S.C. 552a.

(2) The term "Agency" means the Defense Intelligence Agency.

§ 292a.5 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records, maintained by the Defense Intelligence Agency, contains a record pertaining to himself/herself and who desires to review, have copies made of such records, or to be provided an accounting of disclosures from such records, shall submit his or her request in writing by mail or in person under § 292a.6. Requesters are encouraged to review the systems of records notices published by the Agency so as to specifically identify the particular record system(s) of interest to be accessed.

(b) In addition to meeting the requirements set forth in § 292a.6, the individual seeking notification, review or copies, and an accounting of disclosures will provide in writing his or her full name, address, social security account number or date of birth and a telephone number where the requester can be contacted should questions arise concerning his or her request. It is further recommended that individuals indicate any present or past relationship or affiliations, if any, with the Agency and the appropriate dates in order to facilitate a more thorough search of the record system specified and any other system which may con-

BEST COPY AVAILABLE

tain information concerning the individual.

(c) An individual who wishes to be accompanied by another individual when reviewing his or her records, must provide the Agency with written consent authorizing the Agency to disclose or discuss such records in the presence of the accompanying individual.

(d) An authorized representative or designee will be permitted access pursuant to requirements set forth in §§ 292a.6 and 292a.12.

(e) A request for medical records must be submitted as set forth in § 292a.8.

§ 292a.6 Times, places, and requirements for identification of individuals making requests.

(a) Individuals wishing to personally deliver their written request can do so at the Secretariat, Room 3E215, the Pentagon, Washington, DC 20301, during regular business hours, 8 a.m. to 4:30 p.m. This office is closed on Saturday and Sunday and on the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Veterans' Day, Thanksgiving, and Christmas Day.

(b) Individuals wishing to mail their written request should address it to: Secretariat, Defense Intelligence Agency, Washington, DC 20301, and indicate on the outer envelope "Privacy Act Request."

(c) An individual seeking access to or notification of the existence of records about him or herself shall provide in the letter or request his or her full name, address, and date of birth. This information will be used to verify the identity of the requester. In those instances where the information provided is not adequate to identify the requester, the requester will be asked to provide a signed, notarized statement verifying the requester's identity.

(d) An individual who makes a request on behalf of a minor or legal incompetent shall provide a signed, notarized statement affirming the relationship.

(e) When an individual wishes to authorize another person access to his or her records, the individual shall provide a signed, notarized statement authorizing and consenting to access by the designated person.

(f) Any person who knowingly and wilfully requests or obtains any record concerning an individual from this Agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 292a.7 Disclosure of requested information to individuals.

The Defense Intelligence Agency, upon receiving a request for notification of the existence of a record or for access to a record, shall: (a) Determine whether such record exists; (b) determine whether access is available under the Privacy Act; (c) notify the requester of those determinations within 10 days (excluding Saturday, Sunday, and legal public holidays); and (d) provide access to information pertaining to that person which has been determined to be available.

§ 292a.8 Special procedures: Medical records.

Medical records, requested pursuant to § 292a.5 of this part, will be disclosed to the requester unless the disclosure of such records directly to the requester could, in the judgment of a physician, have an adverse effect on the physical or mental health or safety and welfare of the requester or other persons with whom he may have contact. In such an instance, the information will be transmitted to a physician named by the requester or to a person qualified to make a psychiatric or medical determination.

§ 292a.9 Request for correction or amendment to record.

(a) An individual may request that the Defense Intelligence Agency correct, amend, or expunge any record, or portions thereof, pertaining to the requester that he believes to be inaccurate, irrelevant, untimely, or incomplete.

(b) Such requests shall be in writing and may be delivered or mailed to the Secretariat, as indicated in § 292a.6.

(c) The requester shall provide sufficient information to identify the record and furnish material to substantiate the reasons for requesting corrections, amendments, or expurgation.

§ 292a.10 Agency review of request for correction or amendment of record.

(a) The Agency will acknowledge a request for correction or amendment of a record within 10 days (excluding Saturday, Sunday, and legal public holidays) of receipt. The acknowledgement will be in writing and will indicate the date by which the Agency expects to make its initial determination.

(b) The Agency shall complete its consideration of requests to correct or amend records within 30 days (excluding Saturday, Sunday, and legal holidays) and inform the requester of its initial determination.

(c) If it is determined that a record should be corrected or amended in whole or in part, the Agency shall advise the requester in writing of its determination and correct or amend the record accordingly. The Agency shall then advise prior recipients of the record of the fact that a correction or amendment was made and provide the substance of the change.

(d) If the Agency determines that a record should not be corrected or amended, in whole or in part, as requested by the individual, the Agency shall advise the requester in writing of its refusal to correct or amend the record and the reasons therefor. The notification will inform the requester that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 292a.11 Appeal of initial adverse Agency determination for access, correction, or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining to himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests should be in writing and may be delivered or mailed to Secretariat, as indicated in § 292a.6.

(c) The requester shall provide a brief and succinct written statement setting forth the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify his or her appeal.

(d) Within 30 days (excluding Saturday, Sunday, and legal public holidays) of the receipt of request for review, the Agency shall advise the individual of the final dispostion of this or her request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropirate action.

(f) In those cases where the initial determinations are sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record: (i) Of the individual's right to file with record in question a concise statement of his or her reasons for disagreeing with the Agency's decision, (ii) of the procedures for filing a statement of disagreement, and (iii) of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

§ 292a.12 Disclosure of record to person other than the individual to whom it pertains.

Except as provided by section 552a(b) of the act, 5 U.S.C. 552a(b), the written request or prior written consent of the individual to whom a record pertains shall be required before such record is disclosed to any person or to another agency outside the Department of Defense.

§ 292a.13 Fees.

(a) Copies of records requested pursuant to § 292a.5 will be provided at a cost of $0.10 per day for photocopying or at a cost not exceed the direct cost of printing, typing or otherwise preparing copies.

(b) Documents may be furnished without charge where total charges are less than $5.00.

(c) Current employees of the Agency will not be charged for the first copy of a record provided by the Agency.

(d) In the absence of an agreement to pay required anticipated costs, the time for responding to a request begins on resolution of this agreement to pay.

(e) The fees prescribed in this subpart may be paid by check, draft or postal money order payable to the Treasury of the United States. Remittance will be forwarded to the office designated in § 292a.6(b).

§ 292a.14 General exemptions. [Reserved]

§ 292a.15 Specific exemptions.

(a) All systems of records maintained by the Defense Intelligence Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652 "Classification and Declassification of National Security Information and Material." dated March 8, 1972 (37 FR 10053, May 19, 1972), and which is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not specifically designated for exemption may contain isolated information which has been properly classified.

(b) The Director, Defense Intelligence Agency, designates the systems of records listed below for exemptions under the specified provisions of the Privacy Act of 1974 (Pub. L. 93-579).

EXEMPTED RECORD SYSTEMS

ID-L DIA 0271

Sysname.

Investigations and Complaints.

Exemption.

Selected documents in this system are exempted from the following provisions of the Title 5, U.S.C.; section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (e)(4)(I).

Authority.

5 U.S.C. 552a: (k)(2), (k)(5), (k)(7).

Reason.

The reasons for asserting these exemptions are to insure the integrity of the Inspector General process within the Agency. The execution of this function requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoings or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Also, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through Inspector General channels for fear of retribution or harassment.

ID-L DIA 0660

Sysname.

Security Files.

Exemption.

Selected documents in this system are exempted from the following provisions of Title 5, U.S.C.; section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority.

5 U.S.C. 552a: (k)(2), (k)(5).

Reason.

The reasons for asserting these exemptions are to insure the integrity of the adjudication process used by the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear of retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters.

Sysname. Attache Special Projects (ASP) and Comparison Channel (CC) Information System.

Exemptions.

Parts of this system may be exempt from the following portions of Title 5, United States Code 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority.

5 U.S.C. 552a(k)(5).

Reason. To protect and ensure the integrity of the ASP and CC information access process. These are necessary to ensure that the agency may obtain candid and necessary information in order to properly develop and resolve information affecting access determinations. If the agency is unable to protect this information, sources, both individuals and agencies, may become reluctant to provide necessary information and the integrity of the access process will be degraded.

[43 FR 31129, July 20, 1978, as amended at 47 FR 44257, Oct. 7, 1982]

PART 293—DEFENSE CRIMINAL INVESTIGATIVE SERVICE IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.
293.1 Purpose.
293.2 Definitions.
293.3 Information and procedures for requesting information.
293.4 Requirements for identification.
293.5 Access by subject individuals.
293.6 Fees.
293.7 Requests for correction or amendment.
293.8 DCIS review of request for amendment.
293.9 Appeal of initial amendment decision.
293.10 Disclosures of DCIS records to other than the subject.
293.11 Penalties.
293.12 Exemptions.
293.13 Ownership of DCIS investigative records.
293.14 Referral of records.

AUTHORITY: Privacy Act of 1974, 5 U.S.C. 552a, Pub. L. 93-579, 88 Stat. 1896, et seq.

SOURCE: 47 FR 33501, Aug. 3, 1982, unless otherwise noted.

§ 293.1 Purpose.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the following rules of procedures are established with respect to access and amendment of records maintained by the Defense Criminal Investigative Service (DCIS) by the individual subjects of these records. These procedures do not apply to current or former DCIS who request access to records pertaining to themselves through normal DCIS channels or by writing the Director, DCIS, P.O. Box 9290, Alexandria, VA 22304.

§ 293.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Defense Criminal Investigative Service.

§ 293.3 Information and procedures for requesting information.

(a) The following is a list of all systems of records maintained by DICS:

Number and Title	
CIS-01	Privacy and Freedom of Information Act Requests
CIS-02	Applicant Records
CIS-03	Personnel Locator Cards
CIS-04	Case Control System
CIS-05	Security Records
CIS-06	Investigative Files

(b) Individuals should submit inquiries regarding all DCIS files by mail to: Defense Criminal Investigative Service, P.O. Box 9290, Alexandria, VA 22304, Attn: FOIA/PA. Inquiries in person may be made Monday through Friday from 9 a.m. to 3 p.m. at Building 8, Room D490, Cameron Station, Alexandria, VA 22314. All personal visits will require identification.

§ 293.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name; maiden name or alias, if appropriate; date and place of birth; and Social Security Number. Where requests are made by mail, the requester's signature must be notarized. Inclusion of telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph such as a driver's license, military identification card, building pass, etc.

§ 293.5 Access by subject individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil or criminal actions or proceedings, or otherwise exempt under § 293.12. Requests for pending investigations will be held in abeyance until completion of the investigation *and* all completion of the subsequent civil or criminal proceedings or actions.

(b) Any individual may authorize DCIS to provide a copy of his/her records to a third party. This authorization must be in writing and should be provided DCIS with the initial request.

§ 293.6 Fees.

Requesters will be charged only for the reproduction of requested documents and postal charges, if applicable. There will be no charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD Directives and Regulations.

§ 293.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provide a basis for evaluating the request. Normally all documents submitted, to include court orders should be certified.

(b) Requirements of identification as outlined in section 4 apply to requests to correct or amend a file.

(c) Incomplete request will not be honored, but the requester will be contacted for the additional information needed to process the request.

(d) The alteration of evidence presented to courts, boards, and other official proceedings is not permitted by this section.

§ 293.8 DCIS review of request for amendment.

(a) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgment.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible DCIS official. Where a DoD recipient of an investigative record cannot be located, the notification will be sent to the personnel security element of the Component to which the file was furnished.

(c) Where there is a determination to deny all or a portion of a request to amend a record, DCIS will promptly: Advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s) from the Director, DCIS.

§ 293.9 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Director, DCIS, at the address given above. The appeal should be concise and should specify the reasons the requester feel that the initial amendment action by DCIS was not satisfactory. Upon receipt of the appeal, the Director, DCIS will review the request and make a determination to approve or deny the appeal.

(b) If the Director, DCIS, decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the DCIS will notify the requester of the reason for the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a federal district court to contest the DCIS decision not to amend the record.

(c) The DCIS will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30-day limit cannot be met.

§ 293.10 Disclosures of DCIS records to other than the subject.

(a) No record containing personally identifiable information within a DCIS system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD Directive 5400.11.

(b) Disclosures that may be made without the request or consent of the individual are enumerated at 5 U.S.C. 552a(b) and in the DoD Directive 5400.11.

§ 293.11 Penalties.

(a) An individual may bring a civil action against the DCIS to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the DCIS from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DCIS who disclose material, which he knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed $5,000.

§ 293.12 Exemptions.

(a) The Director, DCIS, establishes the following exemptions of records systems from the provisions of these rules and indicated portions of the Privacy Act of 1974. The exemptions may be exercised by the Director, DCIS, the Associate Director of Investigative Operations and by the Associate Director of Programs and Management Systems.

(b) Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system.

(c) No personal records releasable under the provisions of 5 U.S.C. 552 will be withheld from the subject individual based on these exemptions.

(d) Exempted systems are:

(1) System Identifier: CIS-06.

System name: Investigative Files.

Exemption: All portions of this system which fall under 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5, U.S.C. Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Exemption is required from these subsections in order to prevent disclosures concerning criminal files which would interfere with the investigation or jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(2) System Identifier: CIS-04.

System name: Case Control System.

Exemption: All portions of this system which fall under 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5, U.S.C. Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G-H-I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Exemption is required from these subsections in order to prevent disclosures concerning criminal files which would interfere with the investigation or jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

§ 293.13 Ownership of DCIS investigative records.

(a) Criminal investigative reports shall not be retained by DoD recipient organizations. Such reports are the property of DCIS and are on loan to the recipient organization for the purpose for which requested or provided. All copies of such reports shall be destroyed within 180 days after the completion of the final action by the requesting organization.

(b) Investigative reports which require longer periods of retention may be retained only with the specific written approval of DCIS.

§ 293.14 Referral of records.

A DCIS system of records may contain records which originated with other DoD Components of Federal agencies who may have claimed exemptions for them under the Privacy Act of 1974. When any action is initiated on a portion of records which may be exempt, consultation with the originating agency or component will be affected.

PART 294—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS: RIGHTS TO FINANCIAL PRIVACY ACT OF 1978

Sec.
294.1 Purpose.
294.2 Applicability and scope.
294.3 Policy.
294.4 Information requirements.
294.5 Responsibilities.
294.6 Definitions.
294.7 Requesting basic identifying account information.
294.8 Procedures for obtaining customer's consent.
294.9 Other access procedures.
294.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.
294.11 Emergency access procedures.
294.12 Procedures for delay of notice.
294.13 Procedures for releasing information obtained from financial institutions.
294.14 Right to Financial Privacy Act of 1978 Annual Report.

ENCLOSURE 1—REQUEST FOR BASIC IDENTIFYING ACCOUNT DATA FORMAT
ENCLOSURE 2—CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS FORMAT
ENCLOSURE 3—FORMAL WRITTEN REQUEST FOR ACCESS FORMAT
ENCLOSURE 4—CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978
ENCLOSURE 5—OBTAINING ACCESSS TO FINANCIAL RECORDS OVERSEAS

AUTHORITY: 92 Stat. 3697 et seq. (12 U.S.C. 3401, et seq.)

SOURCE: 45 FR 17576, Mar. 19, 1980, unless otherwise noted.

§ 294.1 Purpose.

This part implements Title 12, U.S.C. section 3401, et seq., Pub. L. 95-630, "Right to Financial Privacy Act of 1978," and prescribes the procedures for the Department of Defense to use to gain access to financial records maintained by financial institutions.

§ 294.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Investigative Service, and the National Security Agency (hereafter referred to as the "DoD Components").

(b) Its provisions apply only to financial records maintained by financial institutions as defined in § 294.6(a).

§ 294.3 Policy.

(a) It is the policy of the Department of Defense when obtaining financial records from a financial institution to seek the consent of the customer to whom the record pertains, unless doing so compromises or harmfully delays a legitimate law enforcement inquiry. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by this part shall be utilized.

(b) The provisions of 12 U.S.C. 3401 et seq. do not govern obtaining access to financial records maintained by military banking contractors located outside of the United States, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The procedures outlined in enclosure 5 may be followed in obtaining financial information from these facilities.

[45 FR 17576, Mar. 19, 1980, as amended at 46 FR 29706, June 3, 1981]

§ 294.4 Information requirements.

The report required by § 294.14 of this part is assigned Report Control Symbol DD-COMP(A)1538.

§ 294.5 Responsibilities.

(a) *Heads* of affected *DoD Components* shall:

(1) Follow the procedures outlined in this part when seeking access to financial records.

(2) Establish procedures for implementing this part within the Component.

(3) Established procedures to ensure that the report required by § 294.14 is forwarded to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration).

(b) The *Deputy Assistant Secretary of Defense (Administration)*, or designee, shall:

(1) Prepare a consolidated DoD annual report required by 12 U.S.C. 3421(b) and § 294.14.

(2) Provide policy guidance to DoD Components to implement this part.

§ 294.6 Definitions.

(a) *Financial institution.* Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any State or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Financial record.* An original, its copy, or information known to have been extracted from the original record held by a financial institution that pertains to a customer's relationship with the financial institution.

(c) *Person.* An individual or a partnership of five or less individuals.

(d) *Customer.* Any person or authorized representative of that person who used or is using any service of a financial institution or for whom a financial institution is acting or has acted as fiduciary for an account maintained in the name of that person.

(e) *Law enforcement office.* Any element of a DoD Component authorized by the Component head to conduct law enforcement inquiries.

(f) *Law enforcement inquiry.* A lawful investigation or official proceeding that inquires into a violation of or failure to comply with a criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(g) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations of subversive affiliations, suitability information, or hostage situations conducted for the purpose of making personnel security determinations; and also include investigations of allegations that arise subsequent to adjudicative action that require resolution to determine an individual's current eligibility for access to classified information, or assignment or retention in a sensitive position.

(h) *Personnel security element.* Any element of a DoD Component authorized by the Secretary of Defense to conduct personnel security investigations.

§ 294.7 Requesting basic identifying account information.

(a) A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

(1) Name.

BEST COPY AVAILABLE

(2) Address.

(3) Account Number.

(4) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(b) A request for disclosure of the above specified basic identifying information concerning a customer's account shall not require any customer notice (§ 294.9, 294.11 and 294.13), challenge (§ 294.9) or transfer (§ 294.13) procedures. However, this partial exception for basic identifying data shall not alter the mandatory access requirements set forth in § 294.8 and 294.9 to obtain the actual financial record itself.

(c) A format for requesting basic identifying account data is set forth in enclosure 1 of this part.

§ 294.8 Procedures for obtaining customer's consent.

(a) A DoD law enforcement office or personnel security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

(b) Any consent obtained under § 294.8(a) shall:

(1) Be in writing, signed, and dated.

(2) Identify the particular financial records that are being disclosed.

(3) State that the customer may revoke the consent at any time before disclosure.

(4) Specify the purpose for disclosure and to which agency the records may be disclosed.

(5) Authorize the disclosure for a period not in excess of 3 months.

(6) Contain a Privacy Act advisory statement required by Part 286a of this title for a personnel security investigation.

(7) Contain a "Statement of Customer Rights Under the Right to Financial Privacy Act of 1978" (enclosure 2).

(c) Any customer's consent not containing all of the elements listed in § 294.8(b), shall be void. A customer consent form, in a format set forth in enclosure 2, shall be used for this purpose.

(d) A copy of the customer's consent shall be made a part of the law enforcement inquiry or personnel security investigation file.

(e) A certification of compliance with 12 U.S.C. 3401 et seq., in writing (enclosure 4), along with the customer's consent, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(f) The annual reporting requirements of § 294.14 shall apply to any request for access under § 294.8(a).

§ 294.9 Other access procedures.

(a) *Access by compulsory legal process*—(1) *Administrative summons or subpoena.*

(i) Within the Department of Defense, the Inspector General, DoD, has the authority under Pub. L. 95-452 (The Inspector General Act of 1978, as amended by Pub. L. 97-252) to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summonses or subpoenas for access to these records.

(ii) The Inspector General, DoD, shall issue administrative procedures for access to financial records in accordance with established procedures.

(2) *Search warrant.* (i) A law enforcement office may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure in appropriate cases.

(ii) Unless a delay of notice has been obtained under provisions of § 294.12, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

> "Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [agency or department] on [date] for the following purpose: [state purpose]. you may have rights under the Right to Financial Privacy Act of 1978."

(iii) In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search warrants signed by installation commanders or military judges shall not be used to gain access to financial records.

(3) *Judicial subpoena.* Judicial subpoenas are those issued in connection with a pending judicial proceeding and inlcude subpoenas issued under paragraph 115 of the Manual for Courts-Martial (1969 Revised) and Article 46 of the Uniform Code of Military Justice. Cognizant legal counsel shall be consulted on the availability and use of judicial subpoenas.

(b) *Formal written request.* (1) A law enforcement office may issue a formal written request for financial records when the records sought are relevant to a legitimate law enforcement inquiry. This request may be issued only if the customer has declined to consent, § 294.8, to the disclosure of his or her records, or if it is determined that to seek consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request shall be in a format set forth in enclosure 3 and shall:

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and the Component's implementation of this part.

(ii) Describe the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee.

(3) When a formal written request is issued to a financial institution, a copy of the request shall, at the same time or before, be personally served upon, or mailed to the customer's last known address unless a delay of customer notice has been obtained under § 294.12. The notice to the customer shall be in a format similar to enclosure shall be personally served at least 14 days or mailed at least 18 days prior to the date on which access is sought.

(4) The official who signs the customer notice shall be designated to receive any challenge from the customer.

(5) The customer shall have 14 days to challenge a notice request when personal service is made and 18 days when service is by mail.

(6) Components shall establish procedures to ensure that no access to financial records is attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication, prescribed by 12 U.S.C. 3410, of any challenge made.

(7) When a customer fails to file a challenge to access to financial records within the pertinent above time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 et seq. No access to any financial records shall be made before such certification is given.

(c) *Certification.* Prior to obtaining the requested records under § 294.9 (a)(2) and (a)(3), a certification of compliance with 12 U.S.C. 3401 et seq. and Enclosure 4 of this part, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(d) *Annual report.* The annual reporting requirements of § 294.14 shall apply to access procedures under § 294.9 (a) and (b).

[45 FR 17576, Mar. 19, 1980, as amended at 48 FR 20228, May 5, 1983]

§ 294.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.

(a) Except as specified in § 294.10(b), nothing in this part shall apply to requests for financial records in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in E.O. 12036, January 24, 1978.

(b) When a request for financial records is made under § 294.10(a), a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence and foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of 12 U.S.C. 3401 et seq. Such certification, in a format similar to enclosure 4 of this part, shall be made before obtaining any records.

(c) A Component requesting financial records under section (a), above, may notify the financial institution from which records are sought that section 3414(3) of 12 U.S.C., prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(d) The annual reporting requirements of § 294.14 shall apply to any request for access under § 294.10(a).

§ 294.11 Emergency access procedures.

(a) Except as provided in § 294.11(b) and (c), nothing in this part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

(1) Physical injury to any person.

(2) Serious property damage.

(3) Flight to avoid prosecution.

(b) When access is made to financial records under § 294.11(a), Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

(1) Certify in writing, in a format set forth in Enclosure 4 of this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. 3401 et seq., as a prerequisite to obtaining access.

(2) Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(c) After filing of the signed sworn statement required by § 294.11(b)(2), the Component that has obtained access to financial records under § 294.11(a), shall personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under § 294.12.

"Records concerning your transactions held by the financial institution named in the attached request were obtained by [agency or department] under the Right to Financial Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds]."

Mailings under this paragraph shall be by certified or registered mail to the last known address of the customer.

(d) The annual reporting requirements of § 294.14 shall apply to any access pursuant to § 294.11(a).

§ 294.12 Procedures for delay of notice.

(a) The customer notice required by § 294.9(b)(3), § 294.11(c), or § 294.13(c) may be delayed for successive periods of 90 days. The notice required by § 294.12(a)(2)(ii) may be delayed for one period of 180 days and successive periods of 90 days. A delay of notice may only be granted by a court of competent jurisdiction and only when not serving the notice would result in:

(1) Endangering the life or physical safety of any person.

(2) Flight from prosecution.

(3) Destruction of or tampering with evidence.

(4) Intimidation of potential witnesses.

(5) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in § 294.12(a) (1) through (4).

(b) When a delay of notice is appropriate, legal counsel shall be consulted to obtain such a delay. Application for delays of notice shall be made with reasonable specificity.

(c) Upon the expiration of a delay obtained under § 294.12(a), of a notice required by:

(1) § 294.9(a)(2)(ii), the law enforcement office obtaining such records shall mail to the customer a copy of the search warrant and the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [agency or department] on [date]. Notification was delayed beyond the statutory 90-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning [state with reasonable specificity]. You may have rights under the Right to Financial Privacy Act of 1978."

(2) § 294.9(b)(3), the law enforcement office obtaining such records shall serve personally or mail to the customer a copy of the process or request and the following notice:

> "Records of information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on [date]. Notification was withheld pursuant to a determination by the [title of the court so ordering] under the Right to Financial Privacy Act of 1978 that such notice might [state reason]. The purpose of the investigation or official proceeding was [state purpose with reasonable specificity]."

(3) Section 294.11(c), the law enforcement office obtaining financial records shall serve personally or mail to the customer a copy of the request and the notice required by § 294.11(c).

(4) Section 294.13(c), the law enforcement office or personnel security element transferring such records shall serve personally or mail to the customer the notice required by § 294.13(c).

(d) The annual reporting requirements of § 294.14 shall apply to any request for access under the delay of notice.

§ 294.13 Procedures for releasing information obtained from financial institutions.

(a) Financial records obtained under 12 U.S.C. 3401 et seq., shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. 3412."

(b) Financial records obtained under the provisions of 12 U.S.C. 3401 et seq., shall not be transferred to another agency or department outside the Department of Defense unless the head of the transferring law enforcement office, personnel security element, or delegate certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained with the DoD Component copy of the released records.

(c) Unless a delay of customer notice has been obtained under § 294.12, when financial information is transferred under § 294.13 (b) the law enforcement office or personnel security element shall within 14 days, personally serve or mail to the customer, at his or her last known address, a copy of the certificate required by § 294.13 (b), and the following notice:

> Copies of or information contained in your financial records lawfully in possession of (name of Component) have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.

(d) If a request for release of information is from a federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities, as defined in E.O. 12036 for purposes of conducting such activities, the transferring DoD Component shall release the information without notifying the customer, unless permission to provide notification is given in writing by the requesting agency.

(e) Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence, precautions must be taken to ensure that:

(1) The reports or correspondence are not distributed outside the Department of Defense except in compliance with § 294.13 (b) and (c); and

(2) The report or correspondence contains an appropriate warning restriction on the first page or cover.

(f) A suggested restrictive legend for use on the first page or cover sheet of reports or other correspondence follows:

> Some of the information contained herein (cite specific paragraph) is financial record information which was obtained pursuant to the Right to Privacy Act of 1978, 12 U.S.C. 3401 et seq. This information may not be re-

leased to another federal agency or department outside the Department of Defense without compliance with the specific requirements of 12 U.S.C. 3412.

[45 FR 17576, Mar. 19, 1980, as amended at 46 FR 29706, June 3, 1981]

§ 294.14 Right to Financial Privacy Act of 1978 Annual Report.

(a) Each affected DoD Component shall compile an annual report setting forth the following for the preceding calendar year:

(1) The number of requests for access to financial institutions specifying the types of access and any other information deemed relevant or useful.

(2) The number of customer challenges to access and whether they were successful.

(3) The number of transfers to agencies outside of the Department of Defense of information obtained under this part.

(4) The number of customers challenges to the transfer of information and whether they were successful.

(5) The number of applications for delay of notice, the number granted, and the names of the officials requesting such delays.

(6) The number of delay of notice extensions sought and the number granted.

(7) The number of refusals by financial institutions to grant access by category of authorization, such as, customer consent or formal written request.

(b) This report shall be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), by February 15 annually.

ENCLOSURE 1—REQUEST FOR BASIC IDENTIFYING ACCOUNT DATA FORMAT

[*Official Letterhead*]

Mr./Mrs. XXXXXXXXXX,
Chief Teller (as appropriate), First National Bank, Little Rock, AR 72203

Dear Mr./Mrs. XXXXXXXXXXXXXX. In connection with a legitimate law enforcement inquiry and pursuant to section 3413(g) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., you are requested to provide the following account information: [Name, address, account number, and type of account of any customer or ascertainable group of customers associated with a certain class of financial transactions as set forth in § 294.7.]

I hereby certify, pursuant to section 3403(b) of the Right of Financial Privacy Act of 1978, that the provisions of the Act have been complied with as to this request for account information.

[Official Signature Block]

Under section 3417(c) of the Act, good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the subject in connection with the disclosure of the requested financial records.

[46 FR 29706, June 3, 1981]

ENCLOSURE 2—CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS FORMAT

Pursuant to section 3404(a) of the Right to Financial Privacy Act of 1978, I, [Name of customer], having read the explanation of my rights on the reverse side, hereby authorize the [Name and address of financial institution] to disclose these financial records: [List the particular financial records] to [DoD Component] for the following purpose(s): [Specify the purpose(s)].

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than three months from the date of my signature.

Date: ——————————————————
Signature: ————————————————
[Typed name]
[Mailing address of customer]

Statement of Customer Rights Under the Right to Financial Privacy Act of 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to the financial institution making your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose. Generally, the federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a federal agency's request.

Exceptions

In some circumstances, a federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the federal agency will be required to go to court for permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper.

When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a federal agency that obtains your financial records is prohibited from transferring them to another federal agency unless it certifies in writing that the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If the federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

(Last Name, First Name, Middle Initial) Title (Area Code) (Telephone number)

(Component activity, Local Mailing Address)

[46 FR 29706, June 3, 1981]

ENCLOSURE 3—FORMAL WRITTEN REQUEST FOR ACCESS FORMAT

[*Official Letterhead*]

Mr./Mrs. XXXXXXXXXX,
President (as appropriate), City National Bank and Trust Company, Altoona, PA

Dear Mr./Mrs. XXXXXXXXXX. In connection with a legitimate law enforcement inquiry and pursuant to section 3402(5) and section 3408 of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., and [cite Component's implementation of this part], you are requested to provide the following account information pertaining to the subject:

[Describe the specific records to be examined]

The [DoD Component] is without authority to issue an administrative summons or subpoena for access to these financial records which are required for [Describe the nature or purpose of the inquiry].

A copy of this request was [personally served upon or mailed] to the subject on [Date] who has [10 or 14] days in which to challenge this request by filing an application in an appropriate United States district court if the subject desires to do so.

Upon the expiration of the above mentioned time period and absent any filing or challenge by the subject, you will be furnished a certification certifying in writing that the applicable provisions of the Act have been complied with prior to obtaining the requested records. Upon your receipt of a Certificate of Compliance with the Right to Financial Privacy Act of 1978, you will be relieved of any possible liability to the subject in connection with the disclosure of the requested financial records.

[Official Signature Block]

[46 FR 29706, June 3, 1981]

ENCLOSURE 4—CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

[*Official Letterhead*]

Mr./Mrs. XXXXXXXXXX,
Manager, Army Federal Credit Union, Fort Ord, CA 93941

Dear Mr./Mrs. XXXXXXXXXX. I certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., that the applicable provisions of that statute have been complied with as to the [Customer's consent, search warrant or judicial subpoena, formal written request, emergency access, as applicable] presented on [Date], for the following financial records of [Customer's name]:

[Describe the specific records]
[Official Signature Block]

Pursuant to section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

[46 FR 29706, June 3, 1981]

ENCLOSURE 5—OBTAINING ACCESS TO FINANCIAL RECORDS OVERSEAS

(a) The provisions of 12 U.S.C. 3401 et seq. do not govern obtaining access to financial records maintained by military banking contractors in overseas or other financial institutions in offices located on DoD installations outside the United States, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The purpose of this part is to describe a uniform procedure for access to the financial records of these institutions.

(b) Access to financial records maintained by military banking contractors in overseas areas or other financial institutions located on DoD installations outside the United States, the District of Columbia, Guam, American Samoa or the Virgin Islands is preferably obtained by customer consent. However, in those cases where it would not be appropriate to obtain this consent or where such consent is refused and the financial institution is not otherwise willing to provide access to its records the law enforcement activity may seek access by the use of a search authorization issued by the appropriate military official. This search authorization shall be issued in accordance with established Component procedures and the Military Rules of Evidence.

(c) Information obtained under this enclosure shall be properly identified as financial information and transferred only where an official need-to-know exists. Failure to identify or limit access in accordance with this paragraph does not render the information inadmissible in courts-martial or other proceedings.

(d) Access to financial records maintained by all other financial institutions overseas by law enforcement activities shall be in accordance with the local foreign statutes or procedures governing such access.

[46 FR 29706, June 3, 1981]

PART 295—AVAILABILITY TO THE PUBLIC OF DEFENSE MAPPING AGENCY INFORMATION

Sec.
295.1 Purpose.
295.2 Applicability.
295.3 Policy.
295.4 Availability of records.
295.5 DMA Officials authorized to release records requested by members of the public.
295.6 Procedure for submission of requests for DMA records by members of the public.
295.7 Fees.
295.8 Material that may be withheld from disclosure.
295.9 Expedited handling required.
295.10 Appeals.
295.11 Judicial action.

AUTHORITY: 5 U.S.C. 301, 552, as amended by Act of Nov. 21, 1974 (Pub. L. 93-502, 88 Stat. 1-3).

SOURCE: 40 FR 6336, Feb. 11, 1975, unless otherwise noted.

§ 295.1 Purpose.

This part implements 5 U.S.C. 552, as amended, DoD Directive 5400.7 and DoD Regulation 5400.7-R (Part 286 of this chapter) and describes established facilities at which, the officials from whom, and the procedures whereby, members of the public may inspect and copy or obtain copies of unclassified DMA records.

[46 FR 33245, June 29, 1981]

§ 295.2 Applicability.

This part is applicable to Headquarters DMA and all DMA Components.

§ 295.3 Policy.

It is the policy of DMA to make available to the public the maximum amount of information concerning its operations and activities. This basic policy is subject to the exemptions recognized in 5 U.S.C. 552(b) and Part 286 of the chapter. However, notwithstanding such permissible exemptions, it is DMA policy that an exempt record under FOIA will be made available to the public when its disclosure would not be inconsistent with statutory requirements and when no significant and legitimate governmental purpose would be served by withholding the information. Part 286 of this chapter provides additional policy guidance regarding FOIA releasability of DoD and DMA records. If the request is for classified records, the additional procedures outlined in 32 CFR Part 159 should be observed

[46 FR 33245, June 29, 1981]

§ 295.4 Availability of records.

Requests for identifiable records may be initially denied only when a DMA official designated in § 295.5 determines, after consultation with Counsel at a DMA Component with Counsel, or with the Assistant General Counsel, Headquarters DMA, for all other Components, that such a denial is authorized by 5 U.S.C. 552(b).

[46 FR 33245, June 29, 1981]

§ 295.5 DMA Officials authorized to release documents requested by members of the public.

Authority to make initial determinations of whether to deny release of DMA records to members of the public is, in the case of Headquarters DMA, vested in the Assistant General Counsel or the Chief of Staff; in the case of DMA Components such authority is vested in the Component Counsel or Component Director; in all other cases authority is vested in the DMA Assistant General Counsel or Component Director.

[46 FR 33245, June 29, 1981]

§ 295.6 Procedure for submission of requests for DMA records by members of the public.

(a) *Identification of records requested.* Requests to inspect or obtain copies of records will normally be submitted by letter and should contain at least the following information.

(1) As complete an identification as possible of the desired record, including (if known) its title or a description thereof, date and the issuing office.

(2) With respect to matters of official record concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(3) A statement as to whether the requester wishes to inspect the record at a DMA facility or obtain copies thereof by return mail.

(b) *Addressing requests.* Requesters should address their inquiries to the appropriate official as follows:

(1) Director Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305.

(2) Director, DMA Aerospace Center, St. Louis Air Force Station, Missouri 63118.

(3) Director, DMA Hydrographic-Topographic Center, Washington, DC 20315.

(4) Director, DMA Office of Distribution Services, Washington, DC 20315.

(5) Director, Defense Mapping School, Fort Belvoir, Virginia 22060.

(6) Director, DMA Inter American Geodetic Survey, Bldg. 605, Fort Sam Houston, Texas 78234.

If the requester is not certain to which DMA Component his inquiry should be addressed, it may be submitted to the Director, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305 where prompt action will be taken to direct it into proper channels. The requester should always ensure that the words "Freedom of Information Act Request" are conspicuously placed on the front of the envelope of each FOIA request.

(c) *Facilities for inspection and copying of records.* (1) Subject to the exemptions contained in Part 286 of this chapter, Headquarters DMA shall, in accordance with the procedures established in Part 286 of this chapter make available for public inspection and copying in an appropriate facility or facilities the materials described in Part 286 of this chapter, unless such materials are published and copies offered for sale. The public may inspect and copy or have copied available materials in this facility or reading room. The reading facility at Headquarters DMA fulfills the public inspection requirement for Headquarters DMA, DMA Hydrographic/Topographic Center, Defense Mapping School and Office of Distribution Services. The Director, DMA Aerospace Center and the Director, DMA Inter American Geodetic Survey shall provide a reading room and make that facility available to the public.

(2) The General Counsel, DMA will make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967 and required by Part 286 of this chapter to be made available or published. It is hereby determined pursuant to 5 U.S.C. 552(a)(2), with respect to such indexes, that publication thereof in the FEDERAL REGISTER is, in the case of the Defense Mapping Agency, unnecessary and impracticable. In this regard, it should be noted that the mission of the DMA does not include any direct responsibility for "regulatory" or "rule-making" activities in the sense that these are performed by, for example, the public utility type regulatory agencies. All unclassified DMA regulations and related materials, and indexes thereof, will be maintained in current fashion in established facilities.

(3) Use of DMA inspection and copying facilities by members of the public will be on an appointment basis only. Appointments will normally be requested by letter.

[40 FR 6336, Feb. 11, 1975, as amended at 46 FR 33245, June 29, 1981]

§ 295.7 Fees.

The fees described in Part 286 of this chapter pertain to FOIA requests and reflect direct search and duplication costs, recovery of which are permitted by the FOIA. Minimum fees will not be charged and when direct search and duplication costs for a single FOIA request total less than $30.00, fees ordinarily will be waived.

[46 FR 33245, June 29, 1981]

§ 295.8 Material that may be withheld from disclosure.

Only those records subject to the FOIA and falling within the specific exemptions listed in 5 U.S.C. 552(b), and Part 286 of this chapter may be withheld from members of the public. Therefore, a request for a record subject to, and made pursuant to 5 U.S.C. 552 and this part, may be denied only by a DMA official designated in § 295.5, and only upon a determination that:

(a) The record is subject to one or more of the exemptions set forth in 5 U.S.C. 552(b) and Part 286 of this chapter, and a significant and legitimate governmental purpose is served by withholding it;

(b) The record cannot be found because it has not been described with sufficient particularity to enable the DMA to locate it with a reasonable amount of effort; or

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this part.

[46 FR 33245, June 29, 1981]

§ 295.9 Expedited handling required.

The handling of all requests from members of the public to inspect or copy records will be in strict accordance with the procedures prescribed in Part 286 of this chapter. The initial determination of whether to release a record upon request will normally be made and a decision reported to the requester within ten (10) working days of the date a request is received by the official designated to respond for the type of record sought, provided the requester indicates a willingness to reimburse the Agency for any search and duplication costs involved. Forwarding of the requested information must be accomplished promptly and in the normal case will be sent with the decisional letter. Any delay beyond this initial ten-day period may not exceed ten additional working days and will be authorized only for the reasons described in Part 286 of this chapter. When the record requested was originated by another Agency or Component, the request will be *promptly* referred to the originating Agency or Component for disposition. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by originating Agency or Component that manages the records requested. In such cases, the requester will be promptly notified of the referral.

[46 FR 33245, June 29, 1981]

§ 295.10 Appeals.

Any person who is denied a request for a record, in whole or in part, will in accordance with Part 286 of this chapter be given a written explanation of the basis for such determination by an appropriate official designated in § 295.5, and advised of his right to appeal the denial to the General Counsel, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305, within forty (40) working days from the date of the denial letter. The name and title or position of the official responsible for the denial will be included in the writtten response to the requester. Final determinations of appeals will normally be made within twenty (20) working days of receipt thereof by the General Counsel or the Deputy Director, DMA. If, due to unusual circumstances, additional time is needed to decide the appeal, the final determination may be delayed for the number of working days, not to exceed ten (10), which were not utilized as additional time for responding to the initial request. Final denials to provide a requested record will be made in writing by the General Counsel or the Deputy Director, in accordance with appeal procedures prescribed in Part 286 of this chapter.

[46 FR 33245, June 29, 1981]

§ 295.11 Judicial action.

5 U.S.C. 552 provides that a requester will be deemed to have exhausted his administrative remedy after he has been refused the requested record by the head of an agency, or his designee, or when the agency fails to respond to his request within the time limits prescribed by law. The requester may then seek an order from a U.S. District Court:

(a) In the district in which he resides or has his principal place of business; (b) in the district in which the record is situated; or (c) in the U.S. District Court for the District of Columbia, enjoining the agency from withholding the record and ordering its production.

PART 295c—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS, DEFENSE MAPPING AGENCY

Sec.

295c.1 Purpose and scope.
295c.2 Definitions.
295c.3 Procedures for requests for information pertaining to individual records in a record system.
295c.4 Disclosure of requested information to individuals.
295c.5 Request for correction or amendment to record.
295c.6 Agency review of request for correction or amendment of record.
295c.7 Appeal of initial adverse agency determination on correction or amendment.
295c.8 Disclosure of record to person other than the individual to whom it pertains.
295c.9 Fees.
295c.10 Penalties.
295c.11 Specific exemptions.

AUTHORITY: Pub. L. 93-579, secs. 552a (f) and (k); 5 U.S.C. 552a (f) and (k).

SOURCE: 40 FR 55543, Nov. 28, 1975, unless otherwise noted.

§ 295c.1 Purpose and scope.

(a) This regulation is published pursuant to the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 5 U.S.C. 552a (hereinafter the "Privacy Act"). This regulation:

(1) Establishes or advises of procedures whereby an individual can (i) request notification of whether the Defense Mapping Agency (DMA) maintains or has disclosed a record pertaining to him in any nonexempt system of records, (ii) request a copy or other access to such a record or to an accounting of its disclosure, (iii) request that the record be amended and (iv) appeal any initial adverse determination of any such request;

(2) Specifies those systems of records which the Director, Headquarters DMA has determined to be exempt from the procedures established by this regulation and from certain provisions of the Privacy Act. DMA policy encompasses the safeguarding of individual privacy from any misuse of DMA records and the provision of the fullest access practicable to individuals to DMA records concerning them.

BEST COPY AVAILABLE

§ 295c.2 Definitions.

As used in this part:

"Individual" means a natural person who is a citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor have the same rights as the individual and may act on behalf of the individual.

"Maintain" means to collect, use or disseminate records on individuals.

"Record" means any item, collection or grouping of information about an individual that is maintained by the DMA or a Component thereof, including, but not limited to, his education, financial transactions, medical history and criminal or employment history and that contains his name or the identifying number, symbol or other identifying particulars assigned to the individual such as a finger or voice print or a photograph.

"System of records" means a group of any records under the control of the DMA or a Component thereof from which information is retrieved by the name of an individual or by some identifying number or symbol or other identifying particular assigned to the individual.

"Routine use" means (with respect to the disclosure of a record), the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses but also all the proper and necessary uses of the record even if such use occurs infrequently.

§ 295c.3 Procedures for requests for information pertaining to individual records in a record system.

(a) Upon request in person or by mail any individual, as defined in § 295c.2, shall be informed whether or not any DMA system of records contains a record pertaining to him

(b) Any individual requesting such information in person may present himself at HQ DMA or at the principal office of the DMA Component (please refer to the DMA address list at § 295c.3(e)) thought to maintain the record in question and shall provide:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) Acceptable identification to verify the individual's identity, e.g., driver's license, employee identification card or medicare card.

(c) Any individual requesting such information by mail shall address his request to the Director, Defense Mapping Agency, or to the Director of the DMA Component (refer to § 295c.3(e) for address list) thought to maintain the record in question and shall include in such request the following:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) A signed, notarized statement to verify his identity, if, in the opinion of the DMA custodian of the record, the sensitivity of the material involved warrants.

(d) DMA Procedures on Requests for Information. Upon receipt of a request for information made in accordance with these regulations, notice of the existence or nonexistence of any records described in such requests will be furnished to the requesting party within ten working days of receipt.

(e) DMA Headquarters and Component address list:

(1) Director, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, D.C. 20305.

(2) Director, DMA Aerospace Center, St. Louis Air Force Station, Missouri 63118.

(3) Director, DMA Hydrographic Center, Washington, D.C. 20390.

(4) Director, DMA Topographic Center, 6500 Brooks Lane, NW, Washington, DC 20315.

(5) Director, Defense Mapping School, Fort Belvoir, Virginia 22060.

(6) Director, Inter American Geodetic Survey, APO New York 09827.

§ 295c.4 Disclosure of requested information to individuals.

(a) Upon request by an individual made in accordance with the procedures set forth in this section, such individual shall be granted access to any record pertaining to him which is contained in a nonexempt DMA system of records. However, nothing in this section shall allow an individual access to any information compiled by DMA in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a DMA record pertaining to him in person or by mail.

(1) Any individual making such request in person shall present himself at Headquarters Defense Mapping Agency, or at the principal office of the DMA Component (refer to § 295c.3(e) for address list) thought to maintain such record and shall provide identification to verify the individuals' identity, e.g., driver's license, employee identification card, or medicare card.

(2) Any individual making a request for access to records by mail shall address such request to the Director, Defense Mapping Agency, or the Director of the DMA Component (refer to § 295c.3(e) for address list) thought to maintain the record in question, and shall include therein a signed, notarized statement to verify his identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his own choosing while reviewing the record requested. If an individual elects to be so accompanied he shall give notice of such election in his request and shall provide a written statement authorizing disclosure of the record in the presence of the accompanying person. Failure to so notify DMA in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *DMA determination of requests for access.* (1) Upon receipt of a request made in accordance with this section, the Staff Director of the Headquarters or Component Staff Element having responsibility for maintenance of the record in question, or his delegate shall:

(i) Determine whether or not such request shall be granted.

(ii) Make such determination and provide notification within 30 working days after receipt of such request.

(iii) Notify the individual that fees for reproducing copies of records will be assessed and should be remitted before the copies may be delivered. Fee schedule and rules for assessing fees are contained in § 295c.9.

(iv) Requests for access to personal records may be denied only after consultation with Council of a DMA Component, when available, or the Counsel, Headquarters DMA, in all other cases, to determine that such denial is authorized by the Act.

(2) If access to a record is denied because such information has been compiled by DMA in reasonable anticipation of a civil or criminal action or proceeding, the individual will be notified of such determination and his right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making the request shall notify the DMA whether the records requested are to be copied and mailed to him.

(2) If the records are to be made available for personal inspection the individual shall arrange for a mutually agreeable time and place for inspection of the record. The DMA reserves the right to require the presence of a DMA officer or employee during personal inspection of any record pursuant to this section and to request of the individual that he provide a signed acknowledgment of the fact that access to the record in question was granted him by the DMA.

§ 295c.5 Request for correction or amendment to record.

(a) Any individual may request amendment of a record pertaining to him in accordance with the following procedure.

(b) After inspection of a record pertaining to him an individual may file a request in writing with the Staff Director of the DMA Headquarters or Component Staff Element having responsibility for maintenance of the record in question for amendment of a record. Such requests shall specify the particular portions of the record to be amended, the desired amendments and the reasons, supported by documentary proof, if available, therefor.

§ 295c.6 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the Staff Director of the DMA Headquarters or Component Staff Element having responsibility for maintenance of the record in question shall make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or inform the individual by certified mail, return receipt requested, of refusal to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to the Director, Defense Mapping Agency in accordance with § 295c.7.

(b) Requests for amendment of a record may be refused only after consultation with Counsel at a DMA Component, when available, or the Counsel, HQ DMA, in all other cases, to determine that such refusal is authorized by the Act.

(c) Any person or other agency to whom the record has been previously disclosed shall be informed of any correction or notation of dispute with respect to such records.

(d) These provisions for amending records are not intended to permit the alteration of evidence previously presented during any administrative or quasi-judicial proceeding, such as an employee grievance case. Any changes in such records should be made only through the established procedures for such cases. Further, these provisions are not designed to permit collateral attack upon what has already been the subject of an administrative or quasi-judicial action. For example, an individual may not use this procedure to challenge the final decision on a grievance, but the individual would be able to challenge the fact that such action has been incorrectly recorded in his file.

§ 295c.7 Appeal of initial adverse agency determination on correction or amendment.

(a) An individual whose request for amendment of a record pertaining to him may further request a review of such determination in accordance with this section.

(b) Not later than 30 working days following receipt of notification of refusal to amend, an individual may file an appeal of such decision with the Director, Defense Mapping Agency. The appeal shall be in writing, mailed or delivered to Headquarters, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305. The appeal shall identify the records involved, shall indicate the dates of the request and adverse determination and shall indicate the express basis for that determination. In addition, the letter of appeal shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) Upon appeal from a denial to amend a record the Director, Defense Mapping Agency shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than 10 working days after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(1) The Director shall also notify the individual of the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(g)(1A)) regarding judicial review of his determination.

(2) If on appeal the refusal to amend the record is upheld, the individual shall be permitted to file a statement setting forth the reasons for his disagreement with the Director's determination and such statement shall be appended to the record in question.

(d) The Director may extend up to 30 days the time period prescribed above within which to make a determination on an appeal from refusal to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed time period.

§ 295c.8 Disclosure of record to person other than the individual to whom it pertains.

(a) Subject to the conditions hereinafter set forth, no officer or employee of the DMA will disclose any record which is contained in a system of records, by any means of communication to any person or other agency who is not an individual to whom the record pertains.

(b) Any such record may be disclosed to any person or other agency only upon written request or with prior written consent of the individual to whom the record pertains.

(c) In the absence of a written consent from the individual to whom the record pertains, such record may be disclosed only provided such disclosure is:

(1) To those officers and employees of the DoD who have a need for the record in the performance of their duties.

(2) Required under the Freedom of Information Act.

(3) For a routine use as defined in § 295.2 of this chapter.

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the U.S. Code.

(5) To a recipient who has provided the DMA with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and the record is transferred in a form that is not individually identifiable and will not be used to make any decisions about the rights, benefits or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Director, Defense Mapping Agency specifying the particular record and the law enforcement activity for which it is sought.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(9) To either house of Congress, and to the extent of the matter within its jurisdiction, any committee or subcommittee or joint committee of Congress.

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the GAO.

(11) Under an order of a court of competent jurisdiction.

(d) Except for disclosures made pursuant to paragraphs (c) (1) and (2) of this section, an accurate accounting will be kept of the data, nature and purpose of each disclosure of a record to any person or agency, and the name and address of the person or agency to whom the disclosure was made. The accounting of disclosures will be made available for review by the subject of a record at his request except for disclosures made pursuant to paragraph (c)(7) of this section. If an accounting of disclosure has been made, any person or agency contained therein will be informed of any correction or notation of dispute made pursuant to § 295c.6.

§ 295c.9 Fees.

(a) The following services are available with respect to requests made under the provisions of this part for which fees will be charged as provided in paragraphs (b) and (c) of this section.

(1) Copying of records/documents.

(2) Certification of copies of records/documents.

(b) The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted, at the individual's request, by registered, certified, air or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) Schedule of fees:

General fees	
Minimum fee, per request plus	$2 00
Forms, per copy	05
Publication, per printed page	01
Microfiche, per fiche	06
Reports, per printed page	05
(Examples: Cost of 20 forms, $3 00, cost of a printed publication with 100 pages, $3 00, cost of a microfiche publication consisting of 10 fiche, $2 60)	
Office copy reproduction (when shelf stock is not available)	
Minimum charge up to six reproduced pages	2 00
Minimum charge, first fiche	5 00
Each additional page	05
Each additional fiche	10
Other issuances	
Minimum charge up to six pages	2 00
Each additional page	05
Certification and validation of documents with the DMA seal	2 00

(2) Rules relating to charging fees:

(i) Fees may be charged to an individual only for the making of copies when requested by the individual. When copies are made by the DMA as a necessary incident to granting access to a record, a fee may not be charged.

(ii) The individual may not be charged for time spent in searching for requested records or for time spent in reviewing records to determine if they fall within the disclosure requirements of the Act.

(iii) The fee charged may not exceed the direct cost of making the copy.

(3) Certification and validation with the DMA seal of documents will be available at $2.00 for each certification.

(c) Fees charged for the above services are payable in advance by check, or money order payable to the Treasurer of the United States.

§ 295c.10 Penalties.

The Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) makes it a misdemeanor subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. The Act also establishes similar penalties for violations by DMA employees of the Act or regulations established thereunder.

§ 295c.11 Specific exemptions.

(a) The Director of the Defense Mapping Agency proposes to designate the systems of records described in paragraphs (b) through (d) of this section for exemptions under the specified provisions of the Privacy Act of 1974.

(b) ID—Manual.

SYSNAME—504-01 Personnel Security Files.

EXEMPTION—Parts of this system of records are exempt from the following provisions of Title 5, U.S. Code, section 552a: (d), (e) (1), (e) (4) (G), (e) (4) (H), (e) (4) (I) and (f).

AUTHORITY—5 U.S.C. 552a(k)(5).

REASONS—This system of records is maintained solely for the purpose of determining an individual's qualifications, eligibility or suitability for access to classified information. Portions of it are considered relevant and necessary to making judicious determinations as to such qualifications, eligibility or suitability and could only be obtained by providing assurances to the source that his or her identity would not be revealed to the subject of the record. Disclosure of all or part of the record with the identity of the source removed would likely reveal the identity of the source, e.g., the record could contain information which could only have been furnished by one of several individuals known to the subject.

(c) ID—Manual.

SYSNAME—504-01-3 Personnel Security Investigative Files.

EXEMPTION—Parts of this system of records are exempt from the following provisions of Title 5, U.S. Code, section 552a: (d), (e) (1), (e) (4) (G), (e) (4) (H), (e) (4) (I) and (f).

AUTHORITY—5 U.S.C. 552a(k)(5).

REASONS—This system of records is maintained solely for the purpose of determining an individual's qualifications, eligibility or suitability for access to classified information. Portions of it are considered relevant and necessary to making judicious determinations as to such qualifications, eligibility or suitability and could only be obtained by providing assurances to the source that his or her identity would not be revealed to the subject of the record. Disclosure of all or part of the record with the identity of the source removed would likely reveal the identity of the source, e.g., the record could contain information which could only have been furnished by one of several individuals known to the subject.

(d) ID—Manual.

SYSNAME—504-02 Special Security Briefing and Debriefing Files.

EXEMPTION—Parts of this system of records are exempt from the following provisions of Title 5, U.S. Code, section 552a: (d), (e) (1), (e) (4) (G), (e) (4) (H), (e) (4) (I) and (f).

AUTHORITY—5 U.S.C. 552a(k)(5).

REASONS—This system of records is maintained solely for the purpose of determining an individual's qualifications, eligibility or suitability for access to classified information. Portions of it are considered relevant and necessary to making judicious determinations as to such qualifications, eligibility or suitability and could only be obtained by providing assurances to the source that his or her identity would not be revealed to the subject of the record. Disclosure of all or part of the record with the identity of the sources removed would likely reveal the identity of the source, e.g., the record could contain information which could only have been furnished by one of several individuals known to the subject.

(e) In addition, all systems of records maintained by the DMA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that such systems contain any information properly classified under Executive Order 11652, 3 CFR Part 339, and which is required by the said Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

PART 296—PUBLICATIONS OF PROPOSED AND ADOPTED REGULATIONS AFFECTING THE PUBLIC

Sec.
296.1 Purpose.
296.2 Applicability and scope.
296.3 Policy.
296.4 Proposed regulations.
296.5 Publication in the FEDERAL REGISTER of adopted regulations and other matters.
296.6 Petitions.
296.7 Effective date and implementation.

AUTHORITY: 10 U.S.C. 125.

§ 296.1 Purpose.

This part:

(a) Establishes a policy and procedure by which the Department of Defense will invite the comments of the public on those of its proposed regulations and other types of rulemaking as described hereafter which originate within the Department of Defense as a requirement of general applicability and future effect designed to implement, interpret, or prescribe law or policy, or practice or procedure requirements of a component. This requirement applies to those regulations which constitute the authority for actions having a substantial and direct impact on the public when consistent with other responsibilities of the Department for the efficient and responsible conduct of public business.

(b) Implements the provisions of 5 U.S.C. 552 relating to the kinds of regulations that must be published in the FEDERAL REGISTER after they are adopted.

[40 FR 4911, Feb. 3, 1975]

§ 296.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to singularly as a "DoD component" or collectively as "DoD components").

(b) These provisions are applicable to those directives, instructions, regulations, policy memoranda, manuals, and other forms of rulemaking (hereinafter referred to as "regulations") that have a substantial and direct impact on the public. Only a regulation which must be published in the FEDERAL REGISTER after its adoption in accordance with 5 U.S.C. 552 (as implemented in § 296.5) comes within the requirement that it be evaluated to determine whether it will have the substantial and direct impact on the public that warrants an invitation for public comment prior to its adoption. An implementation by a subordinate component of a regulation adopted by a component at a higher level within the Department of Defense is not deemed to "originate" a requirement of general applicability and future effect, and therefore, does not fall within the scope of the obligation to invite public comment on its provisions.

(c) The determination by the component originating a regulation shall be final and conclusive in determining whether a regulation or a proposed regulation comes within the purview of this part. Consideration shall be given, however, to the definition of "rulemaking" found in 5 U.S.C. 551 as it relates to the requirements of 5 U.S.C. 553 in making this determination.

(d) The requirement for inviting public comment on a proposed regulation shall not be deemed applicable to any proposed regulation coming within one or more of the following exemptions or exceptions to the rulemaking procedures set forth in 5 U.S.C. 553.

(1) Any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy.

(2) Any matter relating to (i) agency management, (ii) agency personnel, or (iii) public contracts (e.g., the Armed Services Procurement Regulation), including nonappropriated fund contracts.

(3) Any matter involving (i) interpretative rules, (ii) general statements of policy, or (iii) rules of agency organization, procedure, or practice.

(4) Any situation in which the DoD Component for good cause finds that inviting public comment on a proposed regulation is (i) impracticable, (ii) unnecessary, or (iii) contrary to the public interest, and incorporates in the adopted regulation that determination and its basis.

(e) Exceptions to the requirement in 5 U.S.C. 552 for publication in the FEDERAL REGISTER of adopted regulations for the guidance of the public shall be made in accordance with guidance provided in 32 CFR 286.8.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

§ 296.3 Policy.

(a) It is the policy of the Department of Defense to encourage the maximum practicable participation of the public in the formulation of regulations having a substantial and direct impact on the public, and to inform the public fully through publication in the FEDERAL REGISTER of all adopted regulations intended for public guidance.

(b) A proposed regulation which would originate a Department of Defense policy having a substantial and direct impact on the public should be published, along with a notice of purpose and authority, in the FEDERAL REGISTER in order to invite public comment within a designated time at least 30 days prior to its intended adoption. This policy should be followed even though the proposed regulation may come within one or more of the exceptions or exemptions to the requirement for prepublication of proposed rules described in § 296.2(d) (2) (i) and (ii), (3) and (4), unless it is determined by the DoD Component as a matter within its sole and exclusive prerogative that the employment of the exception or exemption is appropriate to satisfy a significant and legitimate interest of the DoD Component or the public.

(c) After their adoption, all regulations for the guidance of the public shall be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 552, even though they may come within one or more of the exemptions described in 32 CFR 286.6. If no significant and legitimate interest of the DoD Component or public precludes such publication. This policy extends to some adopted regulations for the guidance of the public which were not the subject of notice and public comment.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

§ 296.4 Proposed regulations.

(a) The general notice of a proposed regulation shall be published in the FEDERAL REGISTER in accordance with the guidance contained in the "Federal Register Handbook on Document Drafting" (GSA), whenever that regulation would have a substantial and direct impact on the public or any significant portion of the public, unless it comes within one or more of the exceptions or exemptions previously set forth in § 296.2(d).

(b) The notice shall include:

(1) A statement of the purpose and objective of the proposed regulation;

(2) Reference to the legal authority under which the regulation is proposed; and

(3) The terms or substance of the proposed regulation.

(c) Whenever the originating DoD Component finds that notice and prepublication of a proposed regulation for public comment are impracticable, unnecessary, or contrary to the public interest, it shall incorporate that finding and a brief statement of its reasons in the adopted regulation, or it may adopt and publish in the FEDERAL REGISTER a separate regulation excepting or exempting categories of regulations for any of these reasons, with an explanation of the basis for excepting or exempting each particular category. Separate regulations for this purpose shall be promulgated by the procedures for proposed rules whenever this falls within the requirements of paragraph (a) of this section.

(d) Following the publication of notice and the proposed regulation in the FEDERAL REGISTER, the DoD Component shall give all interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments. An opportunity for oral presentation will normally not be provided, but may as a matter within the sole and exclusive prerogative of the component be extended where it is found to be in the interest of the DoD Component or the public. After careful consideration of all relevant matter presented, the component shall incorporate in the adopted regulation a concise general statement of its basis and purpose. A preamble to the adopted regulation may be published in the FEDERAL REGISTER to explain the relationship of the adopted rule to the proposed rule, including the nature and effect of public comments.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

§ 296.5 Publication in the Federal Register of adopted regulations and other matters.

Subject to the exemptions set forth in 32 CFR 286.6:

(a) Each DoD Component shall publish in the FEDERAL REGISTER an informative, current description for the guidance of the public, of where, how, and by what authority it performs any of its functions. In deciding which information to publish in the FEDERAL REGISTER a DoD Component shall consider the fundamental objective of informing all interested persons of how to deal effectively with the component.

(b) Information to be published in the FEDERAL REGISTER shall include:

(1) Descriptions of the central and field organization of the component concerned, and the established places at which, the employees or members of the armed forces from whom, and the methods whereby the public may secure information, make submittals or requests, or obtain decisions.

(2) The procedures by which a DoD Component conducts its business with the public, both formally and informally.

(3) The rules of procedure which must be followed, the description of forms which must be completed, or the source from which forms may be obtained, and instructions on the scope and content of papers, reports, examinations required to be submitted pursuant to such rules of procedures, as adopted by the component.

(4) Directives, instructions, regulations, manuals, policy memorandums, statements of general policy, or interpretation of general applicability adopted by the agency, and other substantive rules of general applicability affecting the public.

(c) With the approval of the Director of the FEDERAL REGISTER, the requirement for publication in the FEDERAL REGISTER (1 CFR Part 51, 37 FR 23614, Nov. 4, 1972) may be satisfied by reference in the FEDERAL REGISTER to other publications reasonably available to the class of persons affected and containing the information which must otherwise be published in the FEDERAL REGISTER.

BEST COPY AVAILABLE

(1) In order to be eligible for incorporation by reference, the matter must be in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information reasonably available to members of class affected thereby.

(2) Incorporation by reference is not acceptable as a complete substitute for promulgating in full text material required to be published by 5 U.S.C. 552.

(3) Incorporation by reference is acceptable as a means of avoiding unnecessary repetition within the promulgated document of published information already reasonably available to the class affected. Examples include:

(i) Construction standards promulgated by a professional association or architects, engineers, or builders.

(ii) Code of ethics promulgated by professional organizations.

(iii) Forms and formats publicly or privately published and readily available to the persons required to use them.

(d) It is incumbent upon each component to review all information of the type described in paragraph (b) of this section, to insure that it is published on an up-to-date basis in the FEDERAL REGISTER, including every amendment revision, or repeal. No member of the general public can be required to resort to, or be adversely affected by, any material not published as required by the foregoing provisions of § 296.5 unless he has actual and timely notice of the content of that material.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

§ 296.6 Petitions.

Each component shall accord any interested person the right to petition for the issuance, amendment, or repeal of a regulation that originates or would originate, for the Department of Defense or that component, a policy, requirement, or procedure coming within the scope of § 296.4. Any such petition shall be given full and prompt consideration by the component charged with the responsibility for issuing such a regulation. The petitioner shall be advised in writing of the disposition, and the reason for the disposition, of any written petition for the issuance, amendment, or repeal of a regulation. The official responsibility for disposition of the petition may at his absolute discretion, grant the petitioner a right to appear for the purpose of supporting his petition if this is compatible with the orderly conduct of public business.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

§ 296.7 Effective date and implementation.

This part becomes effective on February 1, 1975, but is applicable only to the regulations promulgated under the authority of a component after April 1, 1975. Two copies of implementing regulations shall be forwarded to the General Counsel of the Department of Defense on or before April 1, 1975.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976]

PART 297—DoD NEWSPAPER AND CIVILIAN ENTERPRISE PUBLICATIONS

Sec.

297.1 Purpose.
297.2 Applicability.
297.3 Definitions.
297.4 Policy.
297.5 Procedures.
297.6 Responsibilities.
ENCLOSURE 1—FUNDED NEWSPAPERS
ENCLOSURE 2—CIVILIAN ENTERPRISE PUBLICATIONS
ENCLOSURE 3—Stars and Stripes
ENCLOSURE 4—MAILING OF DoD NEWSPAPERS AND CIVILIAN ENTERPRISE PUBLICATIONS OTHER THAN NEWSPAPERS; SALES AND DISTRIBUTION OF NON-DoD PUBLICATIONS
ENCLOSURE 5—AMERICAN FORCES PRESS AND PUBLICATIONS SERVICE

AUTHORITY: 10 U.S.C. 121 and 133.

SOURCE: 50 FR 32851, Aug. 15, 1985, unless otherwise noted.

§ 297.1 Purpose.

This part reissues DoD Instruction 5120.4, "Policies and Guidelines Governing Armed Forces Newspapers and Civilian Enterprise Publications," March 15, 1973 implements DoD Directive 5122.10 "American Forces Information Service," March 19, 1980 and updates policy, procedures, and responsibilities concerning DoD newspaper and civilian enterprise (CE) publications other than newspapers in support of the DoD Internal Information Program.

§ 297.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein refers to the Army, Navy, Air Force, and the Marine Corps.

§ 297.3 Definitions.

(a) *CE publications other than newspapers.* Authorized publications containing advertising which are prepared and published under contract with commerical publishers. The right to circulate this advertising in these publications to the DoD readership constitutes contractual consideration instead of money to pay for these DoD publications. They become property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides or directories.* Publications that provide DoD personnel information about the mission of their command; the availability of command, installation or community services; local geography; historical background; and other information.

(2) *Installation maps.* Publications designed for orientation of new arrivals or for visitors.

(b) *DoD newspapers.* Authorized publications that support DoD command communication requirements. Usually, they are distributed daily or weekly. DoD newspapers contain most of the following elements to communicate with the intended DoD readership: commanders' comments, letter-to-the-editor columns, news, features, editorials, sports, announcements, entertainment items, photography, and artwork. The term includes also publications in other formats that contain these categories of information. These publications are within the purview of this part. DoD newspapers do not necessarily reflect the offical views of endorsement of content by the Department of Defense.

(1) *CE newspapers.* Newspapers published by commercial publishers under contract with DoD Components or their subordinate commands. Normally, the news and editorial content is prepared by the internal information section of the public affairs staff. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE publications other than newspapers. They become property of the command, installation or intended recipient upon delivery in accordance with terms of the contract.

(2) *Funded newspapers.* Newspapers published by DoD Components or their subordinate commands using appropriate funds. Normally, the editorial content of these newspapers is prepared by the internal information section of the public affairs staff. Usually, these newspapers are printed under contract by a commercial publisher in accordance with DoD or Component printing regulations.

(3) *Overseas UC newspapers.* Newspapers such as *S&S*, approved by the Secretary of Defense to provide world, U.S. and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, DoD, Component, and subordinate command news and information.

(4) *News bulletins and summaries.* Publications of isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher echelon of command when no daily English language newspapers are readily available.

(c) *Organizational terms*—(1) *Command.* A unit or units, an organization or an area under the command of one individual. In this part this term includes organizations headed by senior civilians which require command information type media.

(2) *DoD Components.* See § 297.2.

(3) *Installation.* A military facility or ship which serves as the base for one or more commands. Media covered by this part may serve the command

communication needs of one or several commands located at one installation.

(4) *Major command.* A designated command such as the Air Force Strategic Air Command or the Army Forces Command which serve as the headquarters for subordinate commands or installations which have the same of related missions.

(5) *Subordinate echelons.* Lower levels of command.

(d) *Supplements.* Sections of comic strips, cartoons, features, or advertising printed with or inserted into publications for distribution.

§ 297.4 Policy.

Department of Defense policy is that a free flow of news and information shall be provided to all military personnel without censorship or news management. The calculated withholding of unfavorable news is prohibited.

§ 297.5 Procedures.

(a) *General.* (1) National security information shall be protected in accordance with DoD Directive 5200.1 and DoD 5200.1-R. Certain unclassified information may be released under DoD Directive 5400.7 and DoD 5400.7-R.

(2) Specific items of internal information content of interest to DoD personnel and their dependents prepared for publication in DoD newspapers may be made available to requesters under DoD Directive 5400.7 and DoD 5400.7-R.

(3) DoD newspaper shall be operated according to principles that govern U.S. commercial newspapers.

(4) Editorial policies of DoD newspapers and CE publications other than newspapers shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(5) DoD newspaper editors shall conform to applicable regulations and laws involving libel, copyright, and U.S. Government printing and postal regulations.

(6) DoD newspapers and CE publications other than newspapers shall comply with DoD Directive 5400.11.

(b) *News coverage and content.* (1) News coverage and content in DoD newspapers and publications shall be factual and objective. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(2) Newspapers shall distinguish between facts and opinion both of which may be a part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(3) News content shall be based on releases, reports, and materials provided by commercial news-gathering agencies, when authority exists to use such services; DoD Components, their subordinate echelons; and members of the staffs of DoD newspapers

(4) Overseas Unified Command (UC) newspaper may purchase or contract for and carry news stories, features, syndicated columns, and editiorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the UC Commanders based on evaluation and recommendations of the *Stars and Stripes* (*S&S*) Advisory Board. The Board shall review the balance of news, features, and editorial column and cartoon content of the newspaper at least semiannually.

(5) Funded or CE command or installation newspapers normally shall not be authorized the use of commerical news and opinion sources. The use of such sources is beyond the scope of the mission of command or installation newspapers and puts them in direct competition with commercial newspaper. The use of such sources may be authorized for a specific Funded or CE newspaper by the cognizant DoD Component only when other sources of national and international news and opinions are not available.

(6) The masthead of all DoD newspapers and CE publications shall contain the following disclaimer printed in type no smaller than 6-point:

(i) "This (type of DoD newspaper or CE publication other than newspaper) is an authorized (for *S&S* add "unofficial") publication for members of the Military Services (add "overseas" in publications outside the United States). Contents of (name of the DoD newspaper or CE publication other than newspaper) are not necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or (the name of the publishing DoD Component)." Those publications containing advertising shall contain the following statements:

(A) "The appearance of advertising in this publication, including inserts or supplements, does not constitiute endorsement by the Department of Defense, or (name of commercial publisher) or products or services advertised."

(B) "Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user of patron." If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(C) In CE Publications add: "Published by (name), a private form in no way connected with the (Department of Defense, the U.S. Army, the U.S. Navy, the U.S. Air Force or the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate echelon)."

(7) Overseas UC newspapers, news bulletins and news summaries authorized to carry national and world news include coverage of U.S political campaign mews from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(8) Funded newspaper and CE publications may not contain campaign news or editorials dealing with candidates or issues. CE newspapers may carry paid political advertisements by legitimate candidates or parties provided equal opportunity to advertise is afforded.

(9) During election years, DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various states, the District of Columbia, Puerto Rico and U.S. territories and possessions. These newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program, the OSD, and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in DoD Directive 1000.4.

(10) DoD newspapers and CE publications shall comply with DoD Instruction 1100.13 pertaining to polls, surveys, and stray votes.

(i) DoD Components and subordinate echelons may authorize polls on matters of local interest, such as, soldier of the week, and favorable athlete.

(ii) No DoD newspaper or CE publication may conduct a poll, a survey, or a straw vote relating to a political campaign.

(c) *Advertising.* (1) No DoD newspaper or CE publications other than newspapers may.

(i) Contain any material that implies that DoD Components or their subordinate echelons, endorse or favor a specific commercial product, commodity, or service.

(ii) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(iii) Carry any advertisement that implies discrimination (see paragraph (b)(2)(6)(i)(B) of this section).

(2) It is DoD editorial policy that commercial sponsors shall be mentioned routinely with other pertinent facts in news stories and announcements on Armed Forces Professional Entertainment Program events in DoD newspapers.

(3) Book, radio, television, movie, and other entertainment reviews may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any

of its Components of their subordinate echelons.

(d) *Establishment of DoD newspapers.* (1) Commanders are encouraged to establish Funded (enclosure 1), or CE newspapers (enclosure 2), when:

(i) A valid mission requirement exists:

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of military knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and correct knowledge shortcomings.

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of military information which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling destructive rumors, and keeping members informed on personnel and other military information which will affect their futures. It provides information and assistance to dependents which improves their spirits and thereby the effectiveness of their member. The newspaper encourages participation in various positive leisure-time activities to improve member's morale and steer them away from alcohol abuse and other pursuits which will impair their ability to perform.

(D) The newspaper discourages command members from using drugs and other activities which will detract from mission performance.

(E) CE newspapers provide advertisements which guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact is increased installation-community communication which enhances mutual support.

(F) The newspaper increases command cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practice is vital, but is not an end itself. It is the primary means to enchance receptivity of command communication through the newspaper.

(H) These newspapers exist to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher echelon of command to be the most cost-effective means to fulfill the command communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible.

(3) Funded and CE newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds may not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper is authorized for each command or installation.

(6) If a newspaper is required at a location where more than one command, or headquarters is collocated, the host commander shall be responsible for publication of one Funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters shall assist the staff of the host newspaper with coverage. If required by unusual circumstance, a commander other than the host may public the single authorized newspaper when the majority of affected organizations concur. This provision is not intended to prohibit the headquarters of a geographically dispersed Major command that receives its local coverage to the host-command newspaper from publishing a command-wide newspaper.

(7) When, in the opinion of the Assistant Secretary of Defense (Public Affairs), or the UC Commander, a UC newspaper is needed, establishment shall be directed by the Secretary of

Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas UC newspapers (for (*S&S*) see enclosure 3).

(e) *Establishment of CE publications other than newspapers.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible (see enclosure 1). Only one publication of each category other than newspapers is authorized for each command or installation. The requirements of § 297.5(d)(1)(i)(F) of this section apply to CE publications other than newspapers. These publications shall be approved by the next higher echelon. Care shall be exercised by approval authorities not to overburden community advertisers.

(f) *Use of trademark.* DoD Components and their subordinate echelons are encouraged to trademark the names of their publications.

(g) Mailing requirements and sales and distribution of non-DoD publications: See enclosure 4.

(h) American Forces Press and Publications Service (AFPPS): See enclosure 5.

§ 297.6 Responsibilities.

(a) *The Assistant Secretary of Defense (Public Affairs) (ASD(PA)),* consistent with DoD Directive 5122.5 shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, American Forces Information Service (AFIS).

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The *Director, American Forces Information Service (AFIS),* shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD newspapers and CE publications other than newspapers.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this part.

(3) Serve as the DoD point of contact in the United States for UC newspaper matters.

(4) Monitor effectiveness of business and financial operations of DoD newspapers and provide business counsel and assistance, as appropriate. Ensure that officers being assigned to supervise *S&S* business operations have a masters degree in business administration, funding if necessary.

(5) Provide guidance to the UCs and Military Departments pertaining to DoD newspapers and CE publications other than newspapers.

(6) Sponsor a DoD Interservice Newspaper Committee composed of representatives of the Military Services to coordinate DoD command or installation newspaper matters.

(7) Provide a press service on joint-Service news and information for use by military editors DoD-wide.

(c) The *Secretary of each Military Department* shall:

(1) Provide policy guidance and assistance to the Department's DoD newspaper and CE publications.

(2) Encourage the use of CE newspapers when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized command communications media under this Part.

(4) Designate a member of his public affair to serve on the DoD Interservice Newspaper Committee.

(d) The *Secretary of the Army* shall provide administrative and logistic support to overseas UC newspapers administered as nonappropriated fund instrumentalities.

(e) *Commanders of Overseas Unified Commands* shall:

(1) Publish overseas UC newspapers, if authorized. In discharging this responsibility the UC Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) If the UC newspaper is *S&S:*

(i) Select and appoint the Editor-in-Chief and the Deputy or Assistant Editors-in-Chief, who shall be military officers.

(ii) Establish and maintain an *S&S* Advisory Board.

(iii) Establish and maintain and *S&S* Fund Council.

(3) Monitor and evaluate overall mission effectiveness and ensure compliance with applicable directives.

(4) Ensure that the UC newspaper is prepared to support U.S. forces in the command area during contingencies, and armed conflict.

ENCLOSURE 1—FUNDED NEWSPAPERS

A. Purpose

Funded newspapers support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with DoD or component printing regulations. The editorial content of these newspapers and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the *S&S*. Where printing by *S&S* is not feasible because of distance or other factors, Funded newspapers may be printed by other means.

B. Name

The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate. The emblem of the command or installation may be included in the nameplate, also.

C. Assignment of Personnel

Military and DoD civilian personnel may not be assigned to duty at the premises of the commercial publisher to perform any job function of officials or employees which are part of the business activities or contractual responsibilities of the commercial publisher. The public affairs officer and staff members who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other details of production provided for in the command contract with the commercial printer. A member of the public affairs staff shall review proof copy to prevent mistakes. Text-editing-system pagination and copy terminals owned by the commercial printer may be placed in the command or installation public affairs office by the publisher to enable the newspaper staff to specify layout and prepare editorial materials.

D. Masthead

The masthead shall include the following: "The editorial content is edited, prepared, and provided by the Public Affairs Office of (name of command or installation)." The names and editorial titles of military and civilian personnel assigned the duty of preparing the command or installation news and information content may be listed in a section of the masthead entitled "(name of command or installation) Editorial Staff."

E. Sources of News Materials

Only the commander of public affairs staff shall provide the news, information, photographs, editorial, and other materials to be used. Other authorized news and information sources include the Office of the Assistant Secretary of Defense, Public Affairs (OASD(PA)), AFIS, the Military Services and their subordinate echelons of command. The paper may publish civilian community service news and announcements for the benefit of personnel assigned to the command or installation and their dependents.

F. Funding

Normally, the expense of publishing and distributing Funded newspapers is charged to appropriated funds of the contracting command.

G. Contracting for Printing

The contract for printing of a Funded newspaper shall be handled in accordance with DoD Component printing regulations in conjunction with public affairs as the office of primary interest.

H. Distribution

Funded newspapers may be distributed through official channels. Appropriated funds and manpower may be used for distribution of Funded newspapers, as required.

I. Advertising

Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in Funded newspapers. Funded newspapers may carry no commercial advertising. As a service, the Funded newspaper may carry nonpaid listings of personal items and services for sale by members of the command.

J. Employment and Gratuities

DoD personnel may not accept employment by or gratuities from commercial printers under contract to print Funded newspapers.

ENCLOSURE 2—CIVILIAN ENTERPRISE PUBLICATIONS

A. Purpose

CE publications are economical communication vehicles that support command communication within the DoD Components and their subordinate commands. The DoD Component or subordinate command provides the editorial content. The commercial publisher prints the publications, sells advertising to cover costs and secure earnings, and may make all or part of the distribution. Periodically, qualified commercial publishers have the opportunity to compete for the contract with particular DoD Components or their subordinate commands to publish these publications. The essence of these contracts is an exchange of rights as consideration rather than payment of funds. Appropriated or nonappropriated monies may not be used to pay for any part of the commercial publisher's costs incurred in publishing a CE publication.

B. Name

The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate. The emblem of the command or installation may be included in the nameplate, also.

C. Assignment of Personnel

Military and DoD civilian personnel may not be assigned to duty at the premises of the commercial publisher to perform any job functions which are part of the business activities or contractual responsibilities of a commercial publisher, his official or employees. The public affairs officer and staff who produce the non-advertising content may work on the premises as installation liaison and monitor to specify and coordinate layout and other details provided for in the command contract with the commercial publisher to obtain the most effective possible presentation of the news and information content. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Text-editing-system pagination and copy terminals owned by the commercial publisher may be placed in the command or installation public affairs office for use by the public affairs staff to specify layout and prepare editorial materials. All costs of these terminals shall be borne by the commercial publisher.

D. Masthead

The masthead shall include the following in addition to that required in § 297.5(b)(5) of this part. "The editorial content is edited, prepared, and provided by the Public Affairs Office of (name of command or installation)." The names and editiorial titles of military and civilian personnel assigned the duty of preparing the command editorial content may be listed in a section of the masthead entitled "(name of the command or installation) Editorial Staff."

E. Sources of News Materials

Only the commander or the public affairs staff shall provide the news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Other authorized news and information sources include the OASD(PA), AFIS, the Military Services and their subordinate echelons of command. The paper may publish civilian community service news and announcements for the benefit of command or installation personnel and their dependents. Only the publisher shall utilize the space agreed upon for advertising.

F. Contracting for a CE Publication

1. DoD Components and their subordinate commands are authorized to contract for CE publications. The underlying premise of the CE concept is that DoD Components and their subordinate command will save money by transferring certain publishing and distribution burdens to a private sector publisher selected by competitive bid. Rights and authorizations as legal contractual consideration, instead of money, pay for each CE publication, which is printed and delivered to the command, installation, or its readership, in accordance with terms of a written contract. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The contracting organization guarantees first publication and distribution of the editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with the terms of the contract.

2. In negotiating CE contracts, DoD Components and their subordinate commands shall seek to have the publisher perform as many of the publishing and distribution functions as possible to generate maximum savings. In the contractual relationship command comunication needs and requirements shall be paramount.

3. A written contract with the selected commercial publisher shall be established by the commander for each CE publication. The contract will include provisions which reflect appropriate guidance from this Instruction and cover local requirements. Only reputable firms shall be used. Disreputable business activity in connection with

CE publications can damage relationships with the civilian community.

4. A selection group shall be formed to select a commercial publisher. The chairperson shall be a senior member of the command or activity. Membership shall include legal, procurement, printing, and other functional specialists with skills relevant to the selection and contracting process. The public affairs officer shall serve as executive secretary and advisor. The contracting officer shall execute the contract in accordance with applicable directives. This group shall hear presentations and review written data by prospective commercial publishers or their representatives, secure and review independent data, and make onsite inspections to gather information upon which to base their selection. They shall investigate the competence, reliability, technical, production, and business capabilities and resources of each viable bidder prior to selection. Since exchange of rights is consideration in a CE contract, the best obtainable product and service in exchange for those rights will be the primary criteria for selection. If there is only one bidder, the group may decide that the offer if not sufficient to warrant producing the publication and make no selection. The group may negotiate through the chairperson with a single bidder to obtain the best possible service and product before deciding to accept the bid for contract.

5. A CE commercial publisher will not be required to pay money to the command or installation, or to provide goods, services, or considerations not directly related to the CE publications he has contracted to provide. In selecting a publisher, fair and equal opportunity shall be afforded any responsible, qualified bidder who may wish to submit a proposal to publish the CE publication. The command shall advertise for proposals from the widest possible selection of commercial publishers available. Modern technology may make feasible invitations to bid by commercial publishers located a considerable distance from the command or installation.

6. CE contracts may be entered into for one year with annual options for renewals based on satisfactory performance for up to 4 years, after which they must be rebid. The contract shall not be renewed if the commercial publisher has not executed the provisions of the contract in a satisfactory manner. Contracts will contain a provision for termination for cause whenever the products and services to be provided under the contract become unsatisfactory or contract provisions are not met. The conditions for termination will be included in each contract. Unsatisfactory performance must be documented.

The selection group will perform reviews to decide on annual contract option renewals and terminations for cause. If a CE newspaper contract is terminated, it may be necessary to establish a Funded newspaper temporarily to maintain command communication. If one or more bidders for a CE newspaper contract are not available, it may be necessary to establish a permanent Funded newspaper.

7. Invitations for bid proposals for CE publications must include a description of the categories of news, comics, features, and factural information to be carried plus other required provisions of the contract.

8. A separate contract is not required for CE comics or feature supplements intended for distribution with the CE newspaper by the commercial publisher provided that the contract stipulates that any such supplement shall have the prior approval of the commander.

9. All CE contracts will contain a provision which prohibits CE commercial publishers from entering exclusive advertising agreements with any firm, broker, or individual.

10. In reviewing bids of publishers seeking to enter CE agreements and in negotiating actual agreements, the amount of advertising that will allow the publisher to perform the publishing burdens and still make a reasonable profit shall be taken into consideration. All CE contracts will specify ground rules for inclusion of advertising in each publication. Advertising may be run of the publication, printed in sections within the publication, or included as supplements printed with the publication or inserted, or combinations of these methods. The Military Departments will coordinate a standard set of ratios of editorial to advertising copy for multiples of pages for the use of run of the publication advertising in CE newspapers that will be included in all DoD Component regulations supplementing this Instruction. Contract provisions will be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command communication mission of the publication.

11. CE contracts shall provide that the commander or public affairs officer shall specify design and layout of editorial content. They shall require that the commercial publisher do design, layout, typesetting, pasteup, distribution and other work. The commander or public affairs officer may specify advertising layout to enhance communications effectiveness of the publication. Maximum command-contractor cooperation is mandatory to produce maximum command communication effectiveness.

12. The Military Departments shall develop in conjunction with AFIS, a standard list of required and recommended contract provisions for inclusion in DoD Component reg-

ulations supplementing this Part. These standardized provisions shall be issued by AFIS and utilized by DoD Components and their subordinate commands which contract for CE publications.

G. Distribution of CE Publications

1. A Funded newspaper may not be distributed as an insert to a CE newspaper, nor may a CE newspaper be distributed as an insert to a Funded newspaper.

2. Comic and feature supplements may be inserted into and distributed with a CE newspaper.

3. A CE comic or feature supplement with commercial advertising may be distributed as an insert to a CE newspaper provided a fair and equal opportunity is offered to responsible organizations or personnel to compete for this privilege as provided herein, and the front page of the supplement carries the statement prescribed in § 297.5(b)(5) (i) and (ii) of this part.

4. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

5. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE newspapers may not be distributed outside the intended DoD audience, which includes dependents. The publisher may provide a copy of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

H. Responsibilities Regarding Advertising

1. The commander shall ensure an environment conducive to successful mission performance and preservation of command morale and discipline. DoD Directive 1325.6 gives the commander the authority to prohibit distribution on the installation of a CE publication containing advertising that promotes a situation involving potential riots or other disturbances or when the circulation of such advertising may present a danger to loyalty, discipline, or morale of his personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the identity and reputation of the advertiser.

2. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DoD or Military Service regulations or that may pose a danger or detriment to DoD personnel or their dependents, or that interfere with the command or installation missions. If any such advertisements are identified, the public affairs officer shall request, in writing if necessary, that the commercial publisher delete them. If the publisher prints the issue containing the offensive advertisement(s), the commander may prohibit distribution.

3. The publisher of a CE publication shall place advertisers on notice of the requirement set forth in § 297.5(b)(5) (i) and (ii) of this part.

4. CE publications may carry paid or nonpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulatory documents.

I. Civilian Enterprise Guides, Directories, and Maps

1. The name of the publication may appear on the front cover, inside the front cover, or on the first page. It may include the name and emblem of the command or installation.

2. At the discretion of the commander, emergency and service telephone numbers, such as hospitals, military police, and fire numbers may be included.

3. A CE mission and services pocket guide for transient personnel that contains advertising from businesses in the community whose services may be needed by transients may be contracted for in addition to the installation guide or directory, if needed. Normally, these pocket guides will be procured as a part of the installation guide or directory contract.

J. Employment and Gratuities

DoD personnel may not accept employment by or gratuities from a commercial publisher under CE contract with a command. Other than investigation of the business capability of prospective publishing companies during the bidding process and general monitoring of ongoing business capability to fulfill the contract, personnel of the command or installation may not be connected with the business affairs of the CE publication or other business affairs of commercial publishers under contract.

ENCLOSURE 3—STARS AND STRIPES

A. Purpose

The European and Pacific *S&S* are the UC newspapers of the U.S. European and Pacific Commands. The *S&S* newspapers are mission activities of the Department of Defense.

B. Background

The forerunner of today's *S&S* newspapers was first published in France for U.S.

forces participating in World War I. Following the armistice, the newspaper was disestablished. Publication of the *S&S* resumed in Europe in 1942 and in the Pacific in 1945. Since then, both have been published continuously as the newspaper for DoD personnel serving in the U.S. European and Pacific Command areas.

C. Mission

1. To bring DoD personnel and their dependents the same international, national, and regional news and opinion from commercial sources available to newspapers throughout the United States. This news makes possible the continued intelligence exercise of the responsibilities of citizenship by DoD personnel while they serve away from home. It helps their moral and readiness by dispelling rumor and by keeping them in touch with many aspects of life in the United States while they live in unfamiliar surroundings.

2. To provide applicable U.S. Government, DoD, command, and local news and information which improves individual capability for mission accomplishment and brings a sense of joint mission purpose to the Army, Navy, Air Force and Marine personnel operating together to carry out the U.S. defense mission overseas.

D. Operation

The operations of the *S&S* newspapers shall be conducted similar to comparable commercial newspaper publishing, book and magazine resale, and job printing activities. Modern commercial business techniques and practices shall be used in the operation of *S&S*.

E. Responsibilities

1. In accordance with DoD Directive 5122.10 and this part, the Director, AFIS, shall exercise overall cognizance in the Department of Defense over *S&S* matters on behalf of the ASD(PA).

2. The Secretary of the Army, through the Office of the Adjutant General or other designated office as appropriate, shall:

a. Designate the successor-in-interest to the *S&S*.

b. In coordination with the Director, AFIS, and UC Commanders, ensure the application of financial policies and procedures prescribed by DoD Instruction 7000.12.

c. Provide administrative and logistical support of *S&S* in accordance with DoD Directive 5100.3.

3. The Commander/Editor-in-Chief, *S&S*, shall:

a. Be responsible to the UC Commander for execution of DoD and UC policy concerning the operation of the *S&S*, the publication and distribution of the newspaper, and the operation of *S&S* resale and job printing activities at maximum efficiency while providing the best possible service to DoD personnel in the command area.

b. Supervise continuous planning and execution of initiatives to ensure successful future mission accomplishment.

F. S&S Advisory Board

1. Organization and Management

a. The Commanders-in-Chief of the U.S. European and Pacific Commands each shall be assisted by an *S&S* Advisory Board in exercising responsibility for the *S&S* newspapers published for their command areas.

b. It shall be chaired by the UC Director of Public Affairs and shall be composed of one voting representative each from the Military Service component commands. The Commander/Editor-in-Chief and Managing or Executive Editor of *S&S* shall be members.

c. The Board shall meet not less than twice a year. The minutes of each meeting will be signed by the UC Commander-in-Chief. Recommended actions or editorial guidelines he wishes to become directive will be communicated in writing to the Commander/Editor-in-Chief. Permanent policy will be incorporated in UC regulations.

2. Functions.

The purposes of the Board are:

a. To recommend editorial guidelines to the UC Commander.

b. To evaluate at each meeting compliance with DoD and UC editorial policies to include those concerning free flow of information to DoD personnel. Status and recommendations will be reported to the UC Commander.

c. To serve as a forum for expression and medication of the interests of *S&S* and the commands involved.

d. To evaluate at each meeting the balance of presentation of news articles, opinion columns, and editorial cartoons. To recommend changes, if needed.

e. To maintain an awareness of the newspaper's financial posture.

G. Fund Council

1. Organization and Management

a. The Fund Council shall recommend guidance and provide advice to the UC Commander and Commander/Editor-in-Chief on all business operations of *S&S*. This will include but not be limited to finance and accounting, product pricing, marketing, organization and management, manpower and personnel, circulation, and transportation.

b. The chairperson shall be the Commander/Editor-in-Chief. The membership shall include one voting member each from the

Office of Public Affairs and the Comptroller of the UC and at least one member from each Military Service component command. Members shall be appointed by the UC Commander and shall be the best qualified personnel available in the command in business-related disciplines. The improvement and successful accomplishment of *S&S* business operations shall be the sole interest of Fund Council members while serving in that capacity. Fund Council members shall be appointed by the UC Commander for a 3-year term, which he may extend or curtail. The Fund Council shall meet no less than quarterly. The UC Commander shall sign the proceedings of Fund Council meetings. Actions and policies he desires to become directive shall be communicated to the Commander/Editor-in-Chief in writing. Permanent policies shall be incorporated into command regulations.

2. Functions

a. The Fund Council shall monitor planning and execution of initiatives to ensure successful future mission accomplishment.

b. The Fund Council shall assist the Commander/Editor-in-Chief's with continuous evaluation of external factors which will impact *S&S* such as changes in force levels and economic conditions.

c. The Fund Council shall recommend to the UC Commander approval or disapproval of the Commander/Editor-in-Chief's annual financial plan, to include the capital expenditure budget. It shall monitor execution quarterly. The Fund Council shall recommend approval or disapproval of quarterly changes to the capital expenditure budget. The Commander/Editor-in-Chief shall provide sufficient documentation to Fund Council members between quarterly meetings to keep them informed on progress.

d. The Commander/Editor-in-Chief will present a 2-year forecast annually to the Fund Council which will be provided in writing to the UC Commander.

H. Procedures

1. The *S&S* are Category II Resale and Revenue Sharing Morale, Walfare, and Recreation (MWR) activities of the Department of Defense. Nonappropriated fund financial operations shall be administered as Category II nonappropriated fund instrumentalities (NAFIs) by the Department of the Army under DoD Directive 1015.1.

2. Nomination of candidates for the Commander/Editor-in-Chief and Deputy positions shall be made by proposal of the Military Departments through the Director, AFIS, to the UC Commander, who shall make the final selection.

3. The UCs and *S&S* are authorized direct contact with the Military Departments on personnel matters and with the Department of the Army on financial matters.

4. *S&S* officers directly supervising business affairs shall possess a master's degree in business administration and shall have public affairs experience. *S&S* shall endeavor to recruit civilian personnel, with solid experience, education, and performance credentials in business, publishing, or editorial disciplines. *S&S* shall endeavor to maintain a balanced mix of long-term employees to provide stability and shorter-term employees from industry to bring a new ideas and techniques. The Military Departments shall provide their highest quality public affairs personnel for *S&S* asignments and shall fill military positions at the required grade level.

5. The *S&S* newspapers and other *S&S* services are for overseas DoD organizations, personnel, and their dependents. The newspaper and other services may be made available to other U.S. Government and U.S. Government contractor personnel serving in the UC areas.

6. The *S&S* shall endeavor to provide the newspaper and other services for DoD personnel engaged in military operations, contingencies, and exercises in the most expeditious manner possible in coordination with the participating commands. These services shall be provided on a reimbursable basis, either from the commands concerned or from the individuals receiving the service. In times of armed conflict, the Department of the Army shall provide appropriated funding for production and fee distribution of the *S&S* newspaper to forces within designated combat zones, subject to reimbursement by the other Military Services based on percentages of Military Service member population in the designated combat area.

7. *S&S* newspapers may take no editorial positions and shall maintain balance in presentation of commercial news and opinion. Each *S&S* news or feature story and each in a series shall present a balanced view of the issues involved.

8. As determined by the UC Commander, news of information that may adversely affect the security of our country of endanger the safety of DoD personnel may not be disclosed. This may not be construed to permit the calculated withholding of unfavorable news. Any decision to withhold news or information under this provision shall be reported immediately to the Assistant Secretary of Defense, Public Affairs.

9. In UC areas, U.S. Ambassadors shall be relied upon the notify the UC Commander of issues that may endanger our national security. The UC Commander shall provide guidance to the Commander/Editor-in-Chief.

10. The *S&S* shall cover the news of the command, good or bad, on a balanced, objec-

teve, and impartial basis. *S&S* is not an investigative function within the military community; it is a reporting function. It may report on open or completed investigations by agencies that perform investigative functions, as legally appropriate. *S&S* military reporters may wear military or civilian clothes at the discretion of the Command/Editor-in-Chief. *S&S* has the right to gather and publish information, both positive and negative, within the guidance and constraints of this Part.

11. *S&S* reporters shall make complete inquiry to ascertain the most factual and up-to-date information available before publication of a story. The need for accuracy is paramount. When there is more then one command or viewpoint involved in a story, the story shall be presented with a balanced view. Commanders and public affairs officers shall respond to *S&S* news inquiries on the same basis they respond to commercial media inquiries. *S&S* reporters shall be accorded the same treatment, access to restricted areas, or gatherings provided to reporters from the commercial media. *S&S* reporters may not use their military status or credentials to gain treatment, acess to restricted areas of gatherings, or advantages not accorded civilian media. Commanders and public affairs officers may not use the U.S. Government status of *S&S* news personnel to block the release of or access to otherwise releasable news, information or event.

12. The Commander/Editor-in-Chief shall ensure that all editorial personnel are fully informed on the military missions and other key aspects of the UC and its subordinate command echelons. Also, editorial personnel shall be taught *S&S* editorial policy and fully understand the mission and stauts of *S&S* as a U.S. Government instrumentality as set forth in this instruction and supplementing UC directives. Field reporters and news bureau members shall be the most mature and professional personnel assigned to *S&S*. All shall have *S&S* newsroom experience before being given independent assignments.

13. The *S&S* may use special project reporting teams. One purpose of these teams is balanced, in-depth reporting on operations, actions, or achievements within the UC area. Another is to examine concerns of area commands or the readership to inform on elements of issues or problems progress toward solutions, official and unofficial viewpoints, and the help available, if appropriate. Reporting shall be accomplished in a balnced, accurate, objective, and nonsenational manner. Topics and their planned treatment shall be review by the *S&S* Advisory Board who will provide counsel and arrange command assistance.

14. As the official responsible for both *S&S* and public affairs policy within the UC, the UC Commander shall provide the leadership required to maintain professional working relationships and keep problems resolved between *S&S* and subordinate echelons of the UC.

15. The Armed Forces Radio and Television Service (AFRTS) sensitive subjects summaries may not be used in conjunction with the publication of *S&S*. Representatives of other governments who indicate an interest in the content of the *S&S* shall be informed that the newspaper does not represent the official position of the U.S. Government or the DoD. The *S&S* is a compendium of the commercial news and opinion available to newspapers in the United States, and DoD, command, and local news and information, presented without an editorial position, sensationalism, or censorship for DoD personnel and their dependents serving overseas.

16. Any apparent wrongdoing discovered by *S&S* personnel in the performance of their duties shall be reported immediately to the Commander/Editor-in-Chief who shall notify the appropriate authorities.

17. To serve the news and information needs of DoD personnel, the *S&S* newspapers shall provide the widest possible selection of resale publications for sale at the most reasonable prices possible, either directly or through other authorized sales outlets at their discretion, throughout the areas they serve. To accomplish this mission the *S&S* shall have throughout their service areas the same authorities and rights for resale publications that DoD Exchange Services have on military installations for other non-subsistence goods and services. The cognizant UC Commander shall adjudicate publications resale issues within his command area which cannot be resolved by *S&S* at the operating level (currently an exception to DoD Directive 1320.9 but in consonance with DoD Instruction 1330.18. This guidance shall not be used to restrict sales or distribution of publications to DoD personnel by commercial publishers (see enclosure 4, paragraph D.)

18. The assortment of books and magazines and like products made available for sale to DoD personnel through *S&S* bookstores in each UC area shall approximate that commercially available in the United States. Decisions on which publications to include in this assortment shall be made by the *S&S* on the basis of marketability and service.

I. Management Review and Evaluation

1. The Director, AFIS, shall monitor current business and editorial operations to advise and assist the UC Commander, as required, to maintain high-quality, financially viable *S&S* operations. Annually, the Director, AFIS, shall meet with responsible UC

representatives and the Commanders/Editors-in-Chief shall each provide a short high-points briefing to the ASD(PA) and other senior DoD officials in the Washington area who have *S&S* responsibilities. This briefing shall include a 2-year financial forecast.

2. AFIS shall fund commercial audits every 2 years at each *S&S* (an exception to paragraph V.A.2 of DoD Instruction 7600.6. These audits shall be contracted by *S&S* on a reimbursable basis. The results shall be provided to the UC Commander and to the Director, AFIS. The UC Commander; Director, AFIS; and the *S&S* Management Action Group shall assist as appropriate in the resolution of problem areas highlighted by audits.

J. S&S Management Action Group

1. Organization and Management.

The Director, AFIS, shall be assisted by an *S&S* Management Action Group composed of senior level personnel highly qualified in business and management disciplines from AFIS (chairperson), Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), and other OSD offices with the authority and expertise to assist in solutions to *S&S* problems. A steering committee, chaired by the Director, AFIS, and composed of members at the Deputy Assistant Secretary level or above shall guide and assist the work of the *S&S* Management Action Group, when appropriate. Normally, members of the steering committee will be the supervisors of group members.

2. Functions.

The *S&S* Management Action Group shall execute the following tasks:

a. Monitoring of financial health.

b. Early detection of impending financial crises.

c. Formulating plans, providing leadership, and carrying out actions to assist in resolution of financial problems.

d. Assisting the UC Commander and *S&S* with problem solving, as required.

K. Financial

1. *S&S* operations shall be funded to the maximum extent possible through the sale of the newspaper, books, magazines, and like products; job printing; authorized advertising revenues; and other income.

2. *S&S* are authorized appropriated fund support as follows:

a. As provided under the provisions of DoD Instruction 1015.1 and DoD Directive 1330.2.

b. Direct funding support when adverse conditions in national and international economics, major increases or decreases in the population served, or other circumstances make such funding necessary to ensure the survival of the newspaper without impairment of its mission capability.

c. Regional air transportation or satellite transmission of the newspaper when long distances require these modes to ensure timely delivery.

d. Authorization is granted to the European *S&S* to use indicia or other DoD official postage for mailing of the *S&S* newspaper to locations outside of the Federal Republic of Germany and to remote and isolated areas. Changes may be made to accommodate fluctuations in the circulation of the newspaper; however, European *S&S* shall continue to use in-house or other nonpostal means of transportation to distribute the newspaper to areas that are not remote or isolated.

3. Appropriated fund support of *S&S* is the responsibility of the Department of the Army. Appropriated funding may be provided by other Military Departments in accordance with existing agreements and procedures or when required by special circumstances or as otherwise stated herein.

L. Nonappropriated Funds

1. The Commander/Editor-in-Chief may apply for nonappropriated funds from the Department of the Army. Submissions shall be routed through the UC Commander to the Director, AFIS. Requests for funds must be recommended by the Fund Council and approved by the UC Commander. AFIS will forward valid requests to the Secretary of the Army for appropriate action.

2. The Fund Council, by unanimous vote, may declare funds excess to the needs of the business, subject to approval of the UC Commander. Such excess funds shall be forwarded in accordance with disposition instructions from the Department of the Army. Funds may be declared excess only after the following requirements are met:

a. Working capital is at a safe level, to be recommended by the Commander/Editor-and-Chief and Fund Council and approved by the UC Commander.

b. Funds required to complete all planned and foreseeable capital expenditure projects and fulfill other legitimate business needs are available in sinking funds.

c. Retirement and severance accounts are fully funded.

d. An emergency sinking fund, designed to sustain *S&S* through foreseeable periods of financial crisis created by adverse economic conditions or any other cause is fully funded. The amount of this sinking fund will be determined by the Fund Council and approved by the UC Commander.

e. The price of the newspaper is at or below the most prevalent charge for similar U.S. newspapers, to be determined by the

Fund Council from the statistics of the American Newspaper Association.

f. Book, magazine and like product prices and job printing are discounted to an appropriate level, to be determined by the Commander/Editor-in-Chief and the Fund Council and approved by the UC Commander.

3. Investment of funds shall be managed by the Commander/Editor-In-Chief and monitored by the Fund Council.

M. Advertising to DoD Personnel Overseas

1. The masthead shall contain the statement specified in § 297.5(b)(5)(i) of this part.

2. The following may be published free of charge:

a. Factual news stories concerning special DoD-affiliated tours or entertainment opportunities for DoD personnel and their dependents.

b. Promotion of AFRTS schedules and services.

3. The *S&S* may promote the newspaper, books, magazines, and like products; authorized advertising; and job printing services (except appropriated fund) in the newspaper, book, magazine, and like product promotions may include publications by name, title, author, and price. The *S&S* shall work with AFRTS outlets to promote these products and services within AFRTS guidelines.

4. To serve the readership the *S&S* are authorized to solicit, sell, publish, and circulate supplement section advertising, which includes prices and brand names of products and services sold or provided by the following: Nonappropriated fund (DoD Instruction 1015.2) and other authorized activities and their concessionaires providing goods, services and entertainment to DoD personnel and dependents; DoD supervised banks and U.S. Federal Credit Unions; colleges and universities affiliated with DoD organizations to provide educational services to DoD personnel and their dependents; and North Atlantic Treaty Organization elements and host-government instrumentalities that offer goods and services to DoD personnel and their dependents. *S&S* has the right to refuse any advertising considered to be illegal, misleading, prejudicial, confusing, or in bad taste. Transactions on advertising will be handled only between *S&S* and the authorized advertisers listed above.

5. The *S&S* may accept paid classified advertising from DoD personnel and their dependents to aid the exchange of personally-owned goods and individual services.

6. The *S&S* may sell through commercial advertising agencies run of the paper advertising of DoD recruiting and retention.

ENCLOSURE 4—MAILING OF DoD NEWSPAPERS AND CIVILIAN ENTERPRISE PUBLICATIONS OTHER THAN NEWSPAPERS; SALES AND DISTRIBUTION OF NON-DoD PUBLICATIONS

A. Policy

It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations (see DoD Instructions 4525.7 and 4525.8). Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. Definition

DoD official postage includes all means of paying postage using funds appropriated for DoD. These means include postage and fees paid indicia, postage metered mail, permit mail, and official mail postage stamps.

C. Use of Official Postage

1. DoD official postage shall be used only for:

a. Mailing copies to satisfy mandatory distribution requirements.

b. Mailing copies to other public affairs offices and for administrative purposes.

c. Mailing copies to headquarters in the chain of command.

d. Bulk mailings of DoD newspapers to subordinate units for distribution to members of the unit.

e. Mailing information copies to other U.S. Government agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a newspaper in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Component or its subordinate echelons of command.

g. By European *S&S* for mailing of the newspaper to authorized recipients outside the geographical area of the Federal Republic of Germany and to remote and isolated areas.

h. European and Pacific *S&S* for official managerial and administrative mailings related exclusively to the business of the U.S. Government.

i. Mailing copies of DoD newspapers and CE publications other than newspapers to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. DoD official postage may not be used for mailing:

a. To the general readership of DoD newspapers and publications other than newspapers, unless specifically excepted in this Instruction.

b. By a CE publisher.

c. CE publications other than newspapers in bulk.

d. *S&S* resale and job printing products.

3. Generally, DoD newspapers shall be mailed as controlled circulation, third-class bulk, third-class, fourth-class mail.

D. Non-DoD Publications

A commander may afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he commands. Such publications may not be distributed through official channels. These publications shall be made available only through subscription or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. Paid subscriptions to community newspapers may be home delivered by the commercial distributor in installation residential areas.

E. Legal Prohibitions

Compliance with Section 18 U.S.C. 1302 and 1307 is mandatory. Section 1302 of Title 18, United States Code. Sections 1302 and 1307 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. This covers such activities a friendly bingo games. Section 1307 of Title 18 authorizes exceptions pertaining to authorized State lotteries. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee in order to play).

F. Review of Mailing and Distribution Effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers per-copy ratios, and use of postal facilities to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

ENCLOSURE 5—AMERICAN FORCES PRESS AND PUBLICATIONS SERVICE

A. General

The American Forces Press and Publications Service (AFPPS), an element of AFIS, provides a variety of print media products in support of the DoD Internal Information Program. These materials include:

1. The American Forces Press Service (AFPS), a monthly feature news service printed and distributed principally to DoD newspaper editors, is camera-ready and contains a broad spectrum of feature materials and artwork intended to supplement material received from other sources.

2. *Defense (year)* magazine, a monthly DoD policy-oriented publication of the Secretary of Defense, intended for worldwide distribution by the Military Departments to military officers, senior-level civilian employees and senior enlisted personnel.

3. Pamphlets, booklets, and posters covering a variety of inter-service information topics.

B. Use of Materials Published by American Forces Press and Publications Service

With the exception of copyrighted matter, all materials published by AFPPS may be reproduced or adapted for use by DoD newspaper editors as appropriate. When AFPPS material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy oriented nature of *DEFENSE (year)* magazine contents, particular care will be taken to preserve the original context, tone and meaning of any material adapted, revised or edited from this publication.

C. Activities Eligible to Receive AFPS

1. All DoD newspapers including *S&S*.

2. Headquarters of DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

D. Procedures

1. The AFPS is mailed directly to requesting commands. Requests should be forwarded directly to:

American Forces Press Service (AFPS), 1735
North Lynn Street (Room 210), Arlington,
VA 22209

2. Requests shall include name and address of newspaper or activity, frequency of publication, and whether the requesting newspaper is Funded or CE.

3. Notification of changes of address, newspaper title, or other status shall be forwarded immediately to the above address.

E. Mandatory Distribution

One copy of each published issue of all DoD newspapers (Funded, CE, and *S&S*) shall be forwarded to the AFPS at the address indicated above.

PART 298—FREEDOM OF INFORMATION PRACTICES

Sec.
298.1 Purpose.
298.2 DIS mission.
298.3 DIS organization.
298.4 Records maintained by DIS.
298.5 Procedure for release of DIS records.
298.6 Effective date.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502.

SOURCE: 40 FR 7289, Feb. 19, 1975, unless otherwise noted.

§ 298.1 Purpose.

This part sets forth the mission of the Defense Investigative Service (DIS), its organization, and policy and procedures for the public to obtain information from DIS records.

§ 298.2 DIS mission.

(a) The Defense Investigative Service was established on April 18, 1972, by Department of Defense (DoD) Directive 5105.42 (38 FR 7131, March 16, 1973) and became operational on October 1, 1972. DIS is a separate operating agency within the DoD, under control of the Secretary of Defense with staff supervision provided by the Assistant Secretary of Defense (Comptroller).

(b) The mission of DIS is to provide the Department of Defense (and, when authorized by the Secretary of Defense, other U.S. Government activities), with a single centrally directed personnel security investigative service. DIS also conducts criminal investigations and crime prevention surveys, and participates in joint investigative task force operations, in support of the Defense Supply Agency (DSA). Finally, it conducts such special investigations as the Secretary of Defense may direct. DIS operates the Defense Central Index of Investigations (DCII), a consolidated index of investigations conducted by all components of the DoD, and the DoD National Agency Check Center (NACC).

§ 298.3 DIS organization.

DIS organization includes a headquarters located in Washington, DC, as well as 20 district offices and over 200 subordinate operating locations throughout Continental United States (CONUS), Alaska, Hawaii, and Puerto Rico. A copy of the DIS Regulation 01-13,[1] "DIS Mailing List," showing addresses of all offices is available to the public upon request and may be obtained from the DIS Public Information Officer, Defense Investigative Service (DO102), Washington, DC 20314.

§ 298.4 Records maintained by DIS.

It is the expressed policy of DIS to make available to the public all information which may be released within the spirit of the Freedom of Information Act with due regard to protecting the privacy of any individual whom it investigates. In this regard DIS maintains the following records which may be of interest to the public:

(a) The DCII, which contains references to investigative records created and held by DoD components. The records indexed are primarily those prepared by the investigative agencies of the Military departments and DIS, covering criminal, fraud, counterintelligence, and personnel security information. Information from the DCII is not available to the general public since release would violate the privacy of individuals whose names are indexed therein.

(b) Records created as required by DoD Directive 5105.42, "Charter for the Defense Investigative Service" (38 FR 7131, March 16, 1973).

(c) Investigative records created in the furnishing of criminal investigative support to DSA.

(d) Publications listed in DIS Regulation 00-1,[1] "Numerical Index of Standard DIS Publications". A copy of DISR 00-1 may be obtained upon request from the DIS Public Information Officer, Defense Investigative Service (D0102), Washington, DC 20314. DISR 00-1 will be provided for the convenience of possible users of the materials but does not constitute a determination that all or any of the publications listed affect the public or have been cleared for release.

---

[1] Filed as part of original.

§ 298.5 Procedure for release of DIS records.

The following procedure is applicable to requests for records by the public, except that subjects of investigative files or their counsel may obtain summaries or extracts under separate procedures for use in administrative or judicial proceedings.

(a) All requests will be submitted in writing and addressed to:

PUBLIC INFORMATION OFFICER (FOIA REQUEST)
DEFENSE INVESTIGATIVE SERVICE (D0102)
WASHINGTON, D.C. 20314

(b) All requests will contain the following information:

(1) As complete an identification as possible of the desired material, including to the extent known, the title, description, and date.

(2) With respect to material concerning investigations of personnel: the first name, middle name or initial, surname, date and place of birth, military service number, and social security account number of the individual concerned. (These items are required to consult the index effectively.)

(3) A statement as to whether the requester wishes to inspect the record or obtain a copy of it.

(4) A statement that all costs for search and duplication, if requested (or costs to a specified limit), will be borne by the requester even if no record, or no releasable record, is found.

(5) In all third-party requests for investigative files (e.g., spouse or executor), a statement indicating what use the requester will make of the record.

(6) The full address (including ZIP code) of the requester.

(c) A notarized request by an individual requesting investigative or other personal records may be required to avoid the risk of invasion of privacy. Requesters will be notified and furnished appropriate forms if this requirement is deemed necessary.

(d) When a request is incomplete or fails to include all of the information required, the requester will be contacted for additional information prior to beginning release procedures.

(e) DIS will dispatch responses to requests within ten working days after receipt by the Information Office, unless an extension is required and the requester notified.

(f) When the release of information has been approved, a statement of estimated costs computed in accordance with the DoD Fee Schedule, or a statement waiving the fee, will be included in the notification of approval. Records approved for release will generally be mailed immediately following receipt of fees. Fees may be waived or reduced where release of information is determined to benefit the general public. Remittances should be in the form of a personal check, bank draft, or postal money order. Remittances are to be made payable to the Treasurer of the United States.

(g) When requests are denied in whole or part, the requester will be advised of the identity of the official making the denial, the reason for the denial, the right of appeal of the decision, and the identity of the person to whom an appeal may be addressed.

(h) Facilities for the review or reproduction of records following approval of request or appeal are available at the DIS Public Information Office, Room 2H063, 1000 Independence Avenue, SW (James Forrestal Building), Washington, D.C. Subject to the approval of the Director, DIS, and upon request of an individual requester, arrangements may be made to review documents at one of the DIS field locations within the United States or Puerto Rico. Depending upon the field location, reproduction service may or may not be available at the specific office.

(i) Appeal of denial to DIS records and information.

(1) All appeals will be submitted in writing and addressed to

DIRECTOR (FOIA APPEAL)
DEFENSE INVESTIGATIVE SERVICE (D0102)
WASHINGTON D.C. 20314

(2) All appeals will contain at least the same identification of the records requested as the original request, and a copy of the letter denying the request, if available.

(3) All appeals will be reviewed by the Director or Deputy Director, DIS. Responses to appeals will be dis-

patched within ten working days after receipt, unless an extension is required and appellant notified. When a request is approved on appeal, the procedures set forth in paragraph (f) of this section will be followed.

§ 298.6 Effective date.

The effective date of this part is February 19, 1975.

PART 298a—DEFENSE INVESTIGATIVE SERVICE, PRIVACY ACT OF 1974

Sec.

298a.1 Purpose and applicability.
298a.2 References.
298a.3 Definitions.
298a.4 Information and procedures for requesting notification.
298a.5 Requirements for identification.
298a.6 Access by subject individuals.
298a.7 Medical records.
298a.8 Request for correction or amendment.
298a.9 DIS review of request for amendment.
298a.10 Appeal of initial amendment decision.
298a.11 Disclosure to other than subject.
298a.12 Fees.
298a.13 Penalties.
298a.14 Exemption.
298a.15 DIS implementation policies.

AUTHORITY: 88 Stat. 1896, 5 U.S.C. 552a, Pub. L. 93-579.

SOURCE: 40 FR 55546, Nov. 28, 1975, unless otherwise noted.

§ 298a.1 Purpose and applicability.

(a) This part establishes rules, policies and procedures for the disclosure of personal records in the custody of the Defense Investigative Service (DIS) to the individual subjects, the handling of requests for amendment or correction of such records, appeal and review of DIS decisions on these matters, and the application of general and specific exemptions, under the provisions of the Privacy Act of 1974. It also prescribes other policies and procedures to effect compliance with the Privacy Act of 1974 and DoD Directive 5400.11.

(b) The procedures set forth in this part do not apply to DIS personnel seeking access to records pertaining to themselves which previously have been available. DIS personnel will continue to be granted ready access to their personnel, security, and other records by making arrangements directly with the maintaining office. DIS personnel should contact the Office of Information and Legal Affairs for access to investigatory records pertaining to themselves or any assistance in obtaining access to other records pertaining to themselves, and may follow the procedures outlined in these rules in any case.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35640, July 10, 1981]

§ 298a.2 References.

(a) Pub. L. 93-579 (5 U.S.C. 552a) the Privacy Act of 1974.

(b) DoD Directive 5400.11, Personal Privacy and Rights of Individuals Regarding Their Personal Records, dated 4 August 1975.

(c) DIS Regulation 28-1, "The DIS Records Management Program."

(d) DoD Directive 5400.7, DoD Freedom of Information Program.

(e) Office of Management and Budget Guidelines for Implementation of the Privacy Act of 1974, dated 1 July 1975.

(f) DIS Manual for Personnel Security Investigations.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35640, July 10, 1981]

§ 298a.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Defense Investigative Service.

[46 FR 35640, July 10, 1981]

§ 298a.4 Information and procedures for requesting notification.

(a) *General.* Any individual may request and receive notification of whether he is the subject of a record in any system of records maintained by DIS using the information and procedures described in this section.

(1) Paragraphs (b) and (c) of this section give information that will assist an individual in determining in what systems of DIS records (if any) he may be the subject. This informa-

tion is presented as a convenience to the individual in that he may avoid consulting the lengthy systems notices elsewhere in the FEDERAL REGISTER.

(2) Paragraph (d) of this section details the procedure an individual should use to contact DIS and request notification. It will be helpful if the individual states what his connection with DIS has or may have been, and about what record system(s) he is inquiring. Such information is not required, but its absence may cause some delay.

(b) *DIS Record Systems:* Following is a list of DIS records systems pertaining to individuals. These systems are described in detail in the DoD input to the FEDERAL REGISTER.

AUTHORIZING DIS RECORDS SYSTEMS PERTAINING TO INDIVIDUALS

Number	Title
DIS 1-01	Privacy and Freedom of Information Request Records
DIS 1-02	Personnel Locator System
DIS 2-01	Inspector General Complaints
DIS 4-01	Civilian Employee Personnel Records
DIS 4-02	Optional Personnel Management Records (OPMR)
DIS 4-04	Civilian Applicant Records
DIS 4-05	Military Personnel Management Information System
DIS 4-06	Civilian Personnel Management Information System
DIS 4-07	Adverse Actions, Grievance Files and Administrative Appeals
DIS 4-08	Equal Employment Opportunity Complaints
DIS 4-09	Merit Promotion Plan Records
DIS 4-10	Incentive Awards
DIS 5-01	Investigative Files System
DIS 5-02	The Defense Central Index of Investigations (DCII)
DIS 5-03	National Agency Check Case Control System (NACCS)
DIS 5-04	Defense Case Control System (DCCS)
DIS 5-05	Subject and Reference Locator Records
DIS 6-01	Defense Investigative Service Personnel Security Files
DIS 6-02	Special Compartmented Intelligence (SCI) Access File
DIS 7-01	Enrollment Registration and Course Completion
DIS 7-02	Guest Instructor Identification Records
DIS 8-01	Industrial Personnel Security Clearance File

(c) *Categories of Individuals in DIS Record Systems:* (1) If an individual has ever been investigated by DIS, the investigative case file should be a record in system DIS 5-01. An index to such files should be in DIS 5-02.

(2) If an individual has ever made a formal request to DIS under the Freedom of Information Act or the Privacy Act of 1974, a record pertaining to that request under the name of the requester, or subject matter, will be in system DIS 1-01.

(3) If an individual is or has ever been a member of DIS, i.e., a civilian employee or appointee, or a military assignee, then he may be a subject of any of the 22 record systems depending on his activities, with the following exceptions:

(i) Civilian personnel will not be subjects of DIS 4-05.

(ii) Military personnel will not be subjects of systems DIS 4-06, 07, 08, or 09.

(4) Individuals who have been applicants for employment with DIS, or nominees for assignment to DIS, but who have not completed their DIS affiliation, may be subjects in systems DIS 4-02, 4-04, 5-01, 5-02, or 6-01.

(5) Any individual who is a subject, victim or cross-referenced personally in an investigation by an investigative element of any DoD component, may be referenced in the Defense Central Index of Investigations, system DIS 5-02, in an index to the location, file number, and custodian of the case record.

(6) Individuals who have ever presented a complaint to or have been connected with a DIS Inspector General inquiry may be subjects of records in system DIS 2-01.

(7) If an individual has ever attended the Defense Industrial Security Institute, he should be subject of a record in DIS 7-01.

(8) If an individual has ever been a guest speaker or instructor at the Defense Industrial Security Institute, he should be the subject of a record in DIS 7-02.

(9) If an individual is an employee or major stockholder of a government contractor or other DoD-affiliated company or agency and has been issued, now possesses or has been processed for a security clearance, he may be subject to a record in DIS 8-01.

(d) *Procedures:* The following procedures should be followed to determine if an individual is a subject of records maintained by DIS, and to request notification and access.

(1) Individuals should submit inquiries in person or by mail to the Office of Information and Legal Affairs, 1900 Half St., SW, Washington, DC 20325. Inquiries by personal appearance should be made Monday through Friday from 8:30 to 11:30 a.m. and 1:00 to 4:00 p.m. The information requested in § 298a.5 must be provided if records are to be accurately identified. Telephonic requests for records will not be honored. In a case where the system of records is not specified in the request, only systems that would resonably contain records of the individual will be checked, as described in § 298a.4b.

(2) Only the Director, the Chief, Office of Information and Legal Affairs, or the Director for Investigations may authorize exemptions to notification of individuals in accordance with § 298a.14.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35640, July 10, 1981]

§ 298a.5 Requirements for identification.

(a) *General.* Only upon proper identification, made in accordance with the provisions of this section, will any individual be granted notification concerning and access to all releasable records pertaining to him which are maintained in a DIS system

(b) *Identification.* Identification of individuals is required both for accurate record identification and to verify identity in order to avoid disclosing records to unauthorized persons. Individuals who request notification of, access to, or amendment of records pertaining to themselves, must provide their full name (and additional names such as aliases, maiden names, alternate spellings, etc., if a check of these variants is desired), date and place of birth, and social security account number (SSAN).

(1) Where reply by mail is requested, a mailing address is required, and a telephone number is recommended to expedite certain matters. For military requesters residing in the United States, home address or P.O. Box number is preferred in lieu of duty assignment address.

(2) Signatures must be notarized on requests received by mail. Exceptions may be made when the requester is well known to releasing officials. For requests made in person, a photo identification card, such as military ID, driver's licnse or building pass, must be presented.

(3) While it is not required as a condition of receiving notification, in many cases the SSAN may be necessary to obtain an accurate search of DCII (DIS 5-02) records.

(c) A DIS Form 30 (Request for Notification of/Access to Personal Records) will be provided to any individual inquiring about records pertaining to himself whose mailed request was not notarized. This form is also available at the Office of Information and Legal Affairs, Washington, DC for those who make their requests in person.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.6 Access by subject individuals.

(a) *General.* (1) Individuals may request access to records pertaining to themselves in person or by mail in accordance with this section. However, nothing in this section shall allow an individual access to any information compiled or maintained by DIS in reasonable anticipation of a civil or criminal action or proceeding, or otherwise exempted under the provisions of § 298a.14.

(2) A request for a pending personnel security investigation will be held in abeyance until completion of the investigation and the requester will be so notified.

(b) *Manner of access.* (1) Requests by mail or in person for access to DIS records should be made to the Offices specified in the record systems notices published in the FEDERAL REGISTER by the Department of Defense or to the Office of Information and Legal Affairs, 1900 Half St. SW, Washington, DC 20324.

(2) Any individual who makes a request for access in person shall:

(i) Provide identification as specified in § 298a.5.

(ii) Complete and sign a request form.

(3) Any individual making a request for access to records by mail shall include a signed and notarized statement to verify his identity, which may be the DIS request form if he has received one.

(4) Any individual requesting access to records in person may be accompanied by an identified person of his own choosing while reviewing the record. If the individual elects to be accompanied, he shall make this known in his written request, and include a statement authorizing disclosure of the record contents to the accompanying person. Without written authorization of the subject individual, records will not be disclosed to third parties accompanying the subject.

(5) Members of DIS field elements may be given access to records maintained by the field elements without referral to the Office of Information or the records system manager at headquarters. An account of such access will be kept for reporting purposes.

(6) In all requests for access, the requester must state whether he or she desires access in person or mailed copies of records. During personal access, where copies are made for retention, a fee for reproduction and postage may be assessed as provided in § 298a.12. Where copies are mailed because personal appearance is impractical, there will be no fee.

(7) All individuals who are not affiliates of DIS will be given access to records in the Office of Information and Legal Affairs, or by means of mailed copies.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.7 Medical records.

(a) *General.* Medical records that are part of DIS records systems will generally be included with those records when access is granted to the subject to which they pertain. However, if it is determined that such access could have an adverse effect upon the individual's physical or mental health, the medical record in question will be released only to a physician named by the requesting individual.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.8 Request for correction or amendment.

(a) *General.* Upon request and proper identification by any individual who has been granted access to DIS records pertaining to himself or herself, that individual may request, either in person or through the mail, that the record be amended. Such a request must be made in writing and addressed to the Office of Information and Legal Affairs, 1900 Half St., SW, Washington, DC 20324.

(b) *Content.* The following information must be included to insure effective action on the request:

(1) *Description of the record.* Requesters should specify the number of pages and documents, the titles of the documents, form numbers if there are any, dates on the documents and names of individuals who signed them. Any reasonable description of the document is acceptable.

(2) *Description of the items to be amended.* The description of the passages, pages or documents to be amended should be as clear and specific as possible.

(i) Page, line and paragraph numbers should be cited where they exist.

(ii) A direct quotation of all or a portion of the passage may be made if it isn't otherwise easily identifiable. If the passage is long, a quotation of its beginning and end will suffice.

(iii) In appropriate cases, a simple substantive request may be appropriate, e.g., "delete all references to my alleged arrest in July 1970."

(iv) If the requester has received a copy of the record, he may submit an annotated copy of documents he wishes amended.

(3) *Type of amendment.* The requester must clearly state the type of amendment he is requesting.

(i) Deletion or expungement, i.e., a complete removal from the record of data, sentences, passages, paragraphs or documents.

(ii) Correction of the information in the record to make it more accurate, e.g., rectify mistaken identities, dates, data pertaining to the individual, etc.

(iii) Additions to make the record more relevant, accurate or timely may be requested.

(iv) Other changes may be requested; they must be specifically and clearly described.

(4) *Reason for amendment.* Requests for amendment must be based on specific reasons, included in writing. Categories of reasons are as follows:

(i) *Accuracy.* Amendment may be requested where matters of fact are believed incorrectly recorded, e.g., dates, names, addresses, identification numbers, or any other information concerning the individual. The request, whenever possible, should contain the accurate information, copies of verifying documents, or indication of how the information can be verified.

(ii) *Relevance.* Amendment may be requested when information in a record is believed not to be relevant or necessary to the purposes of the record system. (See DoD FEDERAL REGISTER Descriptions.)

(iii) *Timeliness.* Amendment may be requested when information is thought to be so old as to no longer be pertinent to the stated purposes of the records system. It may also be requested when there is recent information of a pertinent type that is not included in the record.

(iv) *Completeness.* Amendment may be requested where information in a record is incomplete with respect to its purpose. The data thought to have been omitted should be included or identified with the request.

(v) *Fairness.* Amendment may be requested when a record is thought to be unfair concerning the subject, in terms of the stated purposes of the record. In such cases, a source of additional information to increase the fairness of the record should be identified where possible.

(vi) *Other reasons.* Reasons for requesting amendment are not limited to those cited above. The content of the records is authorized in terms of their stated purposes which should be the basis for evaluating them. However, any matter believed appropriate may be submitted as a basis of an amendment request.

(vii) *Court orders and statutes may require amendment of a file.* While they do not require a Privacy Act request for execution, such may be brought to the attention of DIS by these procedures.

(c) [Reserved]

(d) *Assistance.* Individuals seeking to request amendment of records pertaining to themselves that are maintained by DIS will be assisted as necessary by DIS officials. Where a request is incomplete, it will not be denied, but the requester will be contacted for the additional information necessary to his request.

(e) This section does not permit the alteration of evidence presented to courts, boards and other official proceedings.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.9 DIS review of request for amendment.

(a) *General.* Upon receipt from any individual of a request to amend a record pertaining to himself and maintained by the DIS, the Office of Information and Legal Affairs will handle the request as follows:

(1) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the individual within 10 working days, unless final action regarding approval or denial can be accomplished within that time. In that case, the notification of approval or denial will constitute adequate acknowledgment.

(2) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible official. Where a DoD recipient of an investigative record cannot be located, the notification will be sent to the personnel security element of the parent Component.

(3) Where there is a determination to deny all or a portion of a request to amend a record, the office will promptly:

(i) Advise the requesting individual of the specifics of the refusal and the reasons;

(ii) Inform the individual that he may request a review of the denial(s) from "Director, Defense Investigative Service, 1900 Half Street, SW, Washington, DC 20324." The request should be brief, in writing, and enclose a copy of the denial correspondence.

(b) *DIS Determination to Approve or Deny.* Determination to approve or deny and request to amend a record or portion thereof may necessitate additional investigation or inquiry be made to verify assertions of individuals requesting amendment. Coordination will be made with the Director for Investigations and the Director of the Personnel Investigations Center in such instances.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.10 Appeal of initial amendment decision.

(a) *General.* Upon receipt from any individual of an appeal to review a DIS refusal to amend a record, the Office of Information and Legal Affairs will assure that such appeal is handled in compliance with the Privacy Act of 1974 and DoD Directive 5400.11 and accomplish the following:

(1) Review the record, request for amendment, DIS action on the request and the denial, and direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(2) Recommend to the Director whether to approve or deny the appeal.

(3) If the determination is made to amend a record, advise the individual and previous recipients (or an appropriate office) where an accounting of disclosures has been made.

(4) Where the decision has been made to deny the individual's appeal to amend a record, notify the individual:

(i) Of the denial and the reason;

(ii) Of his right to file a concise statement of reasons for disagreeing with the decision not to amend the record;

(iii) That such statement may be sent to the Office of Information and Legal Affairs, DIS (D0030), Washington, DC 20314, and that it will be disclosed to users of the disputed record;

(iv) That prior recipients of the disputed record will be provided a copy of the statement of disagreement, or if they cannot be reached (e.g., through deactivation) the personnel security element of their DoD component;

(v) And, that he may file a suit in a Federal District Court to contest DIS's decision not to amend the disputed record.

(b) *Time limit for review of appeal.* If the review of an appeal of a refusal to amend a record cannot be accomplished within 30 days, the Office of Information and Legal Affairs will notify the individual and advise him of the reasons, and inform him of when he may expect the review to be completed.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.11 Disclosure to other than subject.

(a) *General.* No record contained in a system of records maintained by DIS shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent or request of the individual subject of the record, except as provided in this section. Disclosures that may be made without the request or consent of the subject of the record are as follows:

(1) To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties, when the use is compatible with the stated purposes for which the record is maintained.

(2) Required to be disclosed by the Freedom of Information Act.

(3) For a routine use as described in DoD Directive 5400.11 and DoD publication in the FEDERAL REGISTER.

(4) To the Census Bureau, National Archives, the U.S. Congress, the Comptroller General or General Accounting Office under the conditions specified in DoD Directive 5400.11.

(5) At the written request of the head of an agency outside DoD for a law enforcement activity as authorized by DoD Directive 5400.11.

(6) For statistical purposes, in response to a court order, or for compelling circumstances affecting the health or safety of an individual as described in DoD Directive 5400.11.

(7) Legal guardians recognized by the Act.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their routine duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DIS systems listed in § 298a.4b.

(1) Accounting entries will normally be kept on a DIS form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) An accounting of disclosures made to agencies outside the DoD of records in the Defense Central Index of Investigations (DIS 5-02) will be kept as prescribed by the Director of Systems, DIS.

(4) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(5) Subjects of DIS records will be given access to associated accounting records upon request, except as exempted under § 298a.14.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981]

§ 298a.12 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DIS records pertaining to them. Requestors will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD Directive 5400.11.

[46 FR 35641, July 10, 1981]

§ 298a.13 Penalties.

(a) An individual may bring a civil action against the DIS to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of 5 U.S.C. 552a. The court may order correction or amendment. It may assess against the United States reasonable attorney fees and other costs, or may enjoin the DIS from withholding the records and order the production to the complainant.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DIS who fully discloses material, which he knows is prohibited from disclosure, or who willfully maintains a system of records without the notice requirements; or against any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. These offenses shall be misdemeanors with a fine not to exceed $5,000.

§ 298a.14 Exemptions.

(a) *General.* The Director of the Defense Investigative Service establishes the following exemptions of records systems (or portions thereof) from the provisions of these rules, and other indicated portions of Pub. L. 93-579, in this section. They may be exercised only by the Director, DIS and the Chief of the Office of Information and Legal Affairs. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system, and not simply because they are authorized by statute. Personal records releasable under the provisions of 5 U.S.C. 552 will not be withheld from subject individuals based on these exemptions.

(b) All systems of records maintained by DIS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652 and which is required by the Executive order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) [Reserved]

(d) *Investigative files—DIS 5-01.*

(1) *Exemption.* 5 U.S.C. 552a(c)(3); (d); (e)(1) and (4)(G), (H) and (I); (f);

(2) *Authority.* 5 U.S.C. 552a(k)(2);

(3) *Reasons.* This exemption will permit the DIS to conduct certain law enforcement investigations effectively, and without compromise, to relay law enforcement information without compromise, and to protect the identities of sources who would not otherwise provide information. Investigatory material, including certain reciprocal investigations and counterintelligence information, must be exempted until such time action is taken regarding the allegations, but after that time only to the extent that the information would identify a confidential source who furnished information under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(e) *Investigative files—DIS 5-01.*

(1) *Exemption.* 5 U.S.C. 552a(c)(3); (d); (e)(1) and (4)(G), (H) and (I); (f);

(2) *Authority.* 5 U.S.C. 552a(k)(3);

(3) *Reasons.* DIS investigatory material exempted under this authority is maintained in connection with assisting the U.S. Secret Service (USSS) to provide protective services to the President of the United States and other individuals pursuant to 18 U.S.C 3056. This exemption provision will enable the DIS to continue its statutory support of this activity without compromising the contents of Secret Service intelligence files or DIS investigative activities.

(f) *Investigative files—DIS 5-01.*

(1) *Exemption.* 5 U.S.C. 552a(c)(3); (d) and (f);

(2) *Authority.* 5 U.S.C. 552a(k)(5);

(3) *Reasons.* Personnel security investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished information under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). This exemption provision will allow the DIS to collect information necessary for personnel security investigations from certain sources who would otherwise be unwilling to provide it. This exemption will be applied only in those cases where it is clearly necessary to grant confidentiality for the performance of an authorized investigative function.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 881, Jan. 5, 1981; 46 FR 35641, July 10, 1981]

§ 298a.15 DIS implementation policies.

(a) *General.* The implementation of the Privacy Act of 1974 within DIS is as prescribed by DoD Directive 5400.11. This section provides special rules and information that extend or amplify DoD policies with respect to matters of particular concern to the Defense Investigative Service.

(b) *Privacy Act rules application.* Any request which cites neither Act, concerning personal record information in a system or records, by the individual to whom such information pertains, for access, amendment, correction, accounting of disclosures, etc., will be governed by the Privacy Act of 1974, DoD Directive 5400.11 and these rules exclusively. Requests for like information which cite only the Freedom of Information Act will be governed by the Freedom of Information Act DoD Regulation 5400.7R. Any denial or exemption of all or part of a record from notification, access, disclosure, amendment or other provision, will also be processed under these rules, unless court order or other competent authority directs otherwise.

(c) [Reserved]

(d) *First amendment rights.* No DIS official or element may maintain any

information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or necessary to and within the scope of an authorized law enforcement activity.

(e) *Standards of accuracy and validation of records.* (1) All individuals or elements within DIS which create or maintain records pertaining to individuals will insure that they are reasonably accurate, relevant timely and complete to serve the purpose for which they are maintained and to assure fairness to the individual to whom they pertain. Information that is not pertinent to a stated purpose of a system of records will not be maintained within those records. Officials compiling investigatory records will make every reasonable effort to assure that only reports that are impartial, clear, accurate, complete, fair and relevant with respect to the authorized purpose of such records are included, and that reports not meeting these standards or serving such purposes are not included in such records.

(2) Prior to dissemination to an individual or agency outside DoD of any record about an individual (except for a Freedom of Information Act action or access by a subject individual under these rules) the disclosing DIS official will by review, make a reasonable effort to assure that such record is accurate, complete, timely, fair and relevant to the purpose for which they are maintained.

(f) *The defense central index of investigations (DCII).* It is the policy of DIS, as custodian, that each DoD component or element that has direct access to or contributes records to the DCII (DIS 5-02), is individually responsible for compliance with The Privacy Act of 1974 and DoD Directive 5400.11 with respect to requests for notification, requests for access by subject individuals, granting of such access, request for amendment and corrections by subjects, making amendments or corrections, other disclosures, accounting for disclosures and the exercise of exemptions, insofar as they pertain to any record placed in the DCII by that component or element. Any component or element of the DoD that makes a disclosure of any record whatsoever to an individual or agency outside the DoD, from the DCII, is individually responsible to maintain an accounting of that disclosure as prescribed by The Privacy Act of 1974 and DoD Directive 5400.11 and to notify the element placing the record in the DCII of the disclosure. Use of and compliance with the procedures of the DCII Disclosure Accounting System will meet these requirements. Any component or element of DoD with access to the DCII that, in response to a request concerning an individual, discovers a record pertaining to that individual placed in the DCII by another component or element, may refer the requester to the DoD component that placed the record into the DCII without making an accounting of such referral, although it involves the divulging of the existence of that record. Generally, consultation with, and referral to, the component or element placing a record in the DCII should be effected by any component receiving a request pertaining to that record to insure appropriate exercise of amendment or exemption procedures.

(g) *Investigative operations.* (1) DIS agents must be thoroughly familiar with and understand these rules and the authorities, purposes and routine uses of DIS investigative records, and be prepared to explain them and the effect of refusing information to all sources of investigative information, including subjects, during interview, in response to questions that go beyond the required printed and oral notices. Agents shall be guided by reference (f) § 298a.2, in this respect.

(2) All sources may be advised that the subject of an investigative record may be given access to it, but that the identities of sources may be withheld under certain conditions. Such advisement will be made as prescribed in § 298a.2(f), and the interviewing agent may not urge a source to request a grant of confidentiality. Such pledges of confidence will be given sparingly and then only when required to obtain information relevant and necessary to the stated purpose of the investigative information being collected.

(h) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under the Privacy Act of 1974 and may be maintained by DIS members for ready identification, contact, and property control purposes only. If at any time the information described in this paragraph is to be used for other than these purposes, that information must become part of a reported, authorized record system. No other information concerning individuals except that described in the records systems notice and this paragraph may be maintained within DIS.

(1) Identification information at doorways, building directories, desks, lockers, nametags, etc.

(2) Identification in telephone directories, locator cards and rosters.

(3) Geographical or agency contact cards.

(4) Property receipts and control logs for building passes, credentials, vehicles, weapons, etc.

(5) Temporary personal working notes kept solely by and at the initiative of individual members of DIS to facilitate their duties.

(i) *Notification of prior recipients.* Whenever a decision is made to amend a record, or a statement contesting a DIS decision not to amend a record is received from the subject individual, prior recipients of the record identified in disclosure accountings will be notified to the extent possible. In some cases, prior recipients cannot be located due to reorganization or deactivations (e.g., U.S. Military Assistance Command, Vietnam). In these cases, the personnel security element of the receiving Defense Component will be sent the notification or statement for appropriate action.

(j) *Ownership of DIS Investigative Records.* Personnel security investigative reports shall not be retained by DoD recipient organizations. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization for the purpose for which requested. All copies of such reports shall be destroyed within 120 days after the completion of the final personnel security determination and the completion of all personnel action necessary to implement the determination. Reports that are required for longer periods may be retained only with the specific written approval of the investigative organization.

(k) *Consultation and referral.* DIS system of records may contain records originated by other components or agencies which may have claimed exemptions for them under the Privacy Act of 1974. When any action that may be exempted is initiated concerning such a record, consultation with the originating agency or component will be effected. Where appropriate such records will be referred to the originating component or agency for approval or disapproval of the action.

[40 FR 55546, Nov. 28, 1975, as amended at 45 FR 35641, July 10, 1981]

PART 299—PUBLIC ACCESS TO RECORDS

Sec.

299.1 Purpose.
299.2 Organization and requests for information.
299.3 Indexes.
299.4 Procedures for request of records.
299.5 Appeals.
299.6 Effective date.

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93-502.

§ 299.1 Purpose.

Pursuant to the requirements of the public information section of the Administrative Procedure Act (5 U.S.C. 552), and amendments thereto contained in Pub. L. 93-502, the following rules of procedure are established with respect to public access to the records of the National Security Agency/Central Security Service.

[40 FR 7300, Feb. 19, 1975]

§ 299.2 Organization and requests for information.

The Headquarters of the National Security Agency/Central Security Service is located at Fort George G. Meade, Md. Requests for information and decisions and other submittals may be addressed to the Chief, Office of Policy, National Security Agency

Central Security Service, Fort George G. Meade, Md. 20755.

[40 FR 7300, Feb. 19, 1975, as amended at 46 FR 26482, May 13, 1981]

§ 299.3 Indexes.

The NSA/CSS does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2) or required to be published for the guidance of the public under 5 U.S.C. 552(a)(1). The Director, NSA/Chief, CSS, has therefore determined, pursuant to pertinent statutory and Executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552 as amended by Pub. L. 93-502.

[40 FR 7300, Feb. 19, 1975]

§ 299.4 Procedures for request of records.

(a) *Requests.* Requests for access to records of the National Security Agency/Central Security Service may be filed by mail addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755. Requests need not be made on any special form but may be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record.

(b) *Determination and notification.* When the requested record has been located and identified, the Information Officer shall determine whether the record is one which, consistent with statutory requirements, Executive orders and appropriate directives, may be released or should be exempted under the provisions of 5 U.S.C. 552. The Chief, Office of Policy, shall notify the requester of his determination within 10 working days of his receipt of the request.

(c) *Extension of response time.* Where the requested record cannot be located within the initial response period of 10 days because of unusual circumstances, the Chief, Office of Policy shall notify the requester in writing within the initial response period of the delay, the reasons therefore, and a date, not to exceed 10 working days, on which a determination is expected to be dispatched.

(d) *Fees.* The Chief, Office of Policy, will inform the requester of the estimated search and duplication fee, and will normally initiate the search upon receipt of one-half of this estimated fee. Upon completion of the search, the requester will be notified of the actual costs and will be requested to submit the balance due prior to further Agency action. Fees will be computed in accordance with the Uniform Schedule of Fees promulgated by the Department of Defense. Fees paid in accordance with this paragraph will be paid by certified check or postal money order forwarded to the Chief, Office of Policy, and made payable to the Treasurer of the United States.

[40 FR 7300, Feb. 19, 1975, as amended at 46 FR 26482, May 13, 1981]

§ 299.5 Appeals.

Any person denied access to records may, within 45 days after notification of such denial, file an appeal to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service. Such an appeal shall be in writing addressed to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755, shall reference the initial denial and shall contain in sufficient detail and particularity the grounds upon which the requester believes release of the information is required. The Freedom of Information Act Appeals Authority shall respond to the appeal within 20 working days after receipt of the appeal.

[40 FR 7300, Feb. 19, 1975, as amended at 46 FR 26482, May 13, 1981]

§ 299.6 Effective date.

This notice shall become effective upon May 13, 1981.

[46 FR 26482, May 13, 1981]

PART 299a—PRIVACY ACT SYSTEMS OF RECORDS—DISCLOSURES AND AMENDMENT PROCEDURES—SPECIFIC EXEMPTIONS, NATIONAL SECURITY AGENCY

Sec.

299a.1 Purpose and scope.

299a.2 Definitions.

299a.3 Procedures for requests concerning individual records in a system of records.

299a.4 Times, places and procedures for disclosure.

299a.5 Medical or psychological records.

299a.6 Parents or legal guardians acting on behalf of minor applicants and employees.

299a.7 Procedures for amendment.

299a.8 Appeal determination.

299a.9 Fees.

299a.10 Specific exemptions.

Authority: 5 U.S.C. 552a, the Privacy Act of 1974, 5 U.S.C. 552, the Freedom of Information Act as amended by Pub. L. 93-502, Pub. L. 86-36, Pub. L. 88-290 and 18 U.S.C. 798.

Source: 40 FR 44294, Sept. 25, 1975, unless otherwise noted.

§ 299a.1 Purpose and scope.

(a) The purpose of this rule is to comply with and implement title 5 U.S.C. 552a, sections (f) and (k), hereinafter identified as the Privacy Act. It establishes the procedures by which an individual may be notified whether a system of records contains information pertaining to the individual; defines times, places and requirements for identification of the individual requesting records, for disclosure of requested records where appropriate, special handling for medical and psychological records, for amendment of records; appeal of denials of requests for amendment; and provides a schedule of fees to be charged for making copies of requested records. In addition, this rule contains the exemptions promulgated by the Director, NSA, pursuant to 5 U.S.C. 552a(k), to exempt Agency systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I); and (f) of section 552a.

(b) The procedures established and exemptions claimed apply to systems of records for which notice has been published in the Federal Register pursuant to the Privacy Act. Requests from individuals for records pertaining to themselves will be processed in accordance with these procedures and consistent with the exemptions claimed. Requests for records which do not specify the statute pursuant to which they are made but which may be reasonably construed to be requests by an individual for records pertaining to that individual will also be processed in accordance with these procedures and consistent with exemptions claimed. To the extent appropriate, these procedures apply to records maintained by this Agency pursuant to system of records notices published by the Civil Service Commission. The primary category of records affected by a Commission notice is that maintained in conjunction with the CSC system identified as "CSC Retirement Life Insurance and Health Benefits Records System." Authority pursuant to 44 U.S.C. 3101 to maintain each system of records for which notice has been published is implied in each "authority for maintenance of a system" of each systems notice.

§ 299a.2 Definitions.

(a) *Access to the NSA headquarters* means current and continuing daily access to those facilities making up the NSA headquarters.

(b) *Individual* means a natural person who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Request* means a request in writing for records pertaining to the requester contained in a system of records and made pursuant to the Privacy Act or if no statute is identified considered by the Agency to be made pursuant to that Act.

(d) *System of Records* means a grouping of records maintained by the Agency for which notice has been published in the Federal Register pursuant to section 552a(e)(4) of Title 5 U.S.C.

§ 299a.3 Procedures for requests concerning individual records in a system of records.

(a)(1) *Notification.* Any individual may be notified in response to a request if any system of records contains a record pertaining to the requester by sending a request addressed to: Information Officer, National Security Agency, Fort George G. Meade, Maryland 20755. Such request shall be in writing, shall be identified on the envelope and the request as a "Privacy Act Request," shall designate the system or systems of records using the names of the systems as published in the system notices, shall contain the full name, present address, date of birth, social security number and dates of affiliation or contact with NSA/CSS of the requester and shall be signed in full by the requester.

(2) A request pertaining to records concerning the requester which does not specify the Act pursuant to which the request is made shall be processed as a Privacy Act request. A request which does not designate the system or systems of records to be searched shall be processed by checking the following systems of records: Applicants; Personnel; Health, Medical and Safety.

(b)(1) *Identification.* Any individual currently not authorized access to the National Security Agency headquarters who requests disclosure of records shall provide the following information with the written request for disclosure: full name, present address, date of birth, social security number, and date of first affiliation or contact with NSA/CSS and date of last affiliation or contact with NSA/CSS.

(2) Any individual currently authorized access to the National Security Agency headquarters shall provide the following information with the request for notification: full name, present organizational assignment, date of birth, social security number.

(3) Such request shall be treated as a certification of the requester that the requester is the individual named. Individuals should be aware that the Privacy Act provides criminal penalties for any person who knowingly and willfully requests or obtains any records concerning an individual under false pretenses.

§ 299a.4 Times, places and procedures for disclosures.

(a) Individual not currently affiliated with NSA.

(1) *Request procedure.* Any individual currently not authorized access to the National Security Agency headquarters shall make the request for notification in writing and shall include the required identifying data. Upon verification of the existence in systems of records pertaining to the requester, a copy of the records located shall be mailed to the requester subject to appropriate specific exemptions, applicable Public Laws, special procedures pertaining to medical records, including psychological records, and the exclusion for information compiled in reasonable anticipation of a civil action or proceeding. If the request cannot be processed within ten working days from the time of receipt of the request, an acknowledgment of receipt of the request will be sent to the requester.

(2) *Appointment of other individual.* If a requester wishes another individual to obtain the requested records on his behalf, the requester shall provide a written, signed, notarized statement appointing that individual as his representative, certifying that the individual appointed may have access to the records of the requester and that such access shall not constitute an invasion of the privacy of the requester nor a violation of his rights under the Privacy Act of 1974.

(b) *Individual currently affiliated with NSA*—(1) *Request procedure.* Any individual currently authorized access to the National Security Agency headquarters may make the request for notification to the appropriate official delegated responsibility for a system of records pursuant to internal agency regulations pertaining to the Privacy Act of 1974. In the alternative, such individual may direct the request to the NSA Information Officer in writing in the same form and including the data required in § 299a.4(a)(1) above. In the case of any denial of notification by officials delegated responsibility for a system the request shall be referred to the NSA Information Officer for review.

(2) *Appointment of other individual.* If the requester makes a request pursuant to this paragraph and wishes to designate another individual to accompany him, the same procedures as pro-

vided in paragraph (a)(2) of this section apply. If the individual appointed is currently authorized access to the National Security Agency headquarters, he may accompany the requester. If the individual appointed is not currently authorized access, a copy of the records located may be mailed to the appointed individual subject to appropriate specific exemptions, applicable Public Laws, special procedures pertaining to medical records including psychological records, and the exclusion for information compiled in reasonable anticipation of a civil action or proceeding.

§ 299a.5 Medical or psychological records.

If the request includes records of a medical or psychological nature, and if an Agency doctor makes the determination that the records requested contain information which would have an adverse effect upon the requester, the requester will be advised to appoint a medical doctor in the appropriate discipline to receive the information. The appointment of the doctor shall be in the same form as that indicated in § 299a.4(a)(2) and shall include a certification that the doctor appointed is authorized to practice the appropriate specialty by virtue of a license to practice same in the state which granted the license.

§ 299a.6 Parents or legal guardians acting on behalf of minor applicants and employees.

Parents or legal guardians acting on behalf of minors who request records concerning NSA/CSS applicants or employees who are minors shall be subject to the same requirements contained in § 299a.4(a)(1) appointment of other individuals, including the requirement for written authorization. Requests by parents or legal guardians acting on behalf of minors will be processed in the same manner and in accordance with the procedures established herein for individuals not currently authorized access to the NSA headquarters.

§ 299a.7 Procedures for amendment.

(a) *Request procedure.* Any request for amendment of a record or records contained in a system of records shall be in writing addressed to the Information Officer, National Security Agency, Fort George G. Meade, Md. 20755, Attention: Privacy Act Amendment, and shall contain sufficient details concerning the requested amendment, justification for the amendment, and a copy of the record(s) to be amended or sufficient identifying data concerning the affected record(s) to permit its timely retrieval. Such requests may not be used to accomplish actions for which other procedures have been established such as grievances, performance appraisal protests, etc. In such cases the requester will be advised of the appropriate procedures for such actions.

(b) *Initial determination.* The NSA Information Officer may make an initial determination concerning the requested amendment within ten working days or shall acknowledge receipt of the amendment request within that period if a determination cannot be completed. The determination shall advise the requester of action taken to make the requested amendment or inform the requester of the rejection of the request, the reason(s) for the rejection and the procedures established by the Agency for review of rejected amendment requests.

(c) *Request on appeal.* A requester may appeal the rejection by the NSA Information Officer of a request for amendment to the Executive for Staff Services. Such appeal shall be in writing, addressed to the Executive for Staff Services, National Security Agency, Fort George G. Meade, Md. 20755, Attention: Privacy Act Amendment Appeal.

§ 299a.8 Appeal determination.

The Executive for Staff Services shall acknowledge receipt of the appeal within ten working days. A determination concerning the appeal shall be provided to the requester within 30 working days, unless the Director, National Security Agency, extends the period for good cause. The Executive for Staff Services shall advise the requester of the action taken to make the requested amendment or inform the requester of the rejection of the appeal, the right to submit for incorporation in the file containing the disputed record(s) a concise statement of disagreement, and notify the requester of the right of judicial review of the denial pursuant to subsection (g)(1)(A) of 5 U.S.C. 552a.

§ 299a.9 Fees.

A fee may be charged for the reproduction of copies of any requested records, provided one copy is made available without charge where access is limited to mail service only. Fees shall be charged in accordance with The Uniform Schedule of Fees established by the Department of Defense pursuant to Pub. L. 93-502.

§ 299a.10 Specific exemptions.

(a)(1) The following National Security Agency systems of records, published in the FEDERAL REGISTER, are specifically exempted from the provisions of 5 U.S.C. 552a, subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) pursuant to subsection (k) of section 552a to the extent that each system contains individual records or files within the category or categories provided by subsection (k). Notice is hereby given that individual records and files within each NSA system of records may be subject to specific provisions of Pub. L. 86-36, Pub. L. 88-290 and Title 18 U.S.C. 798 and other laws limiting access to certain types of information or application of laws to certain categories of information.

(2) In addition, those records maintained pursuant to notice of systems of records published by the CSC are exempted pursuant to Title 5 U.S.C. 552a(k)(1) to the extent that they contain classified information in order to protect such information from unauthorized disclosure. Such records may also be subject to other specific exemptions pursuant to rules promulgated by the CSC.

(b) Systems of records subject to specific exemptions:

(1) *System name:* NSA/CSS Access, Authority and Release of Information File.

Exemption: This system of records is exempted from the sections of title 5 U.S.C. 552a cited in paragraph 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(5)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining access to classified information. The exemption does not limit access to that portion of the records in the system which are not exempted, not otherwise protected from unauthorized disclosure, and which would not undermine the integrity of the controlled access system.

(2) *System name:* NSA/CSS Applicants

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in paragraph 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(5)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purposes of determining suitability; eligibility; qualifications for Federal civilian employment; Federal contracts; or access to classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not subject to this exemption, nor otherwise protected from unauthorized disclosure.

(3) *System name:* NSA/CSS Correspondence, Cases, Complaints, Visitors, Requests

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(4), (k)(5)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(2) to protect from unauthorized disclosure individual records and files which constitute investigatory material compiled for law enforcement purposes pursuant to a lawful national security intelligence investigation and maintain the integrity of the personnel security system required by Pub. L. 88-290. The exemption does not limit access to that portion of the records in the system which are not investigatory material which are not exempted or otherwise protected from unauthorized disclosure.

This system is exempted from all subsections cited pursuant to exemption (k)(4) where individual records and files are maintained and used solely for statistical records in accordance with statutory requirements to insure compliance with those requirements with a minimum of administrative burden and expense.

This system is exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability; eligibility; qualifications for Federal civilian employment, Federal contracts; or access to classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not subject to this exemption or otherwise protected from unauthorized disclosure.

(4) *System name:* NSA/CSS Cryptologic Reserve Mobilization Designee List.

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a (k)(1), (k)(5).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to prevent the unauthorized disclosure of classified information concerning anticipated personnel assignments to sensitive cryptologic positions during periods of national emergency or war requiring reserve mobilization.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for designation for mobilization to fill a sensitive cryptologic position or access to classified material as a result of designation for mobilization.

(5) *System name:* NSA/CSS Equal Employment Opportunity Data.

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (4).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(4) to protect the integrity of those statistical records compiled for Equal Employment Opportunity purposes.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(2) to the extent that individual records and files are related to investigations to enforce the provisions of Pub. L. 92-261 and consistent with the provisions of that statute with respect to individual access to such records. The purpose of the exemption is to protect the integrity of investigations conducted pursuant to Pub. L. 92-261.

(6) *System name:* NSA/CSS Health, Medical and Safety Files.

Exemption: This system of records is exempted from sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(5), (k)(6).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts or access to classified information. The exemption does not limit access to that portion of the records in the system which are not exempted or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(6) to protect those testing or examination materials used solely to determine individual qualifications for employment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(7) *System name:* NSA/CSS Motor Vehicles and Carpools

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure any and all classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

(8) *System name:* NSA/CSS Payroll and Claims

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(2)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up this system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(2) to protect investigatory materials related to the enforcement of laws with respect to claims against the Government. The exemption does not limit access to that portion of the records in the system not related to investigations of claims or otherwise protected from unauthorized disclosure.

(9) *System name:* NSA/CSS Personnel File

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1), (k)(5), (k)(6)

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts or access to classified information. The exemption does not limit access to that portion of the records in the system which are not exempted or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(6) to protect those testing or examination materials used solely to determine individual qualifications for employment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(10) *System name:* NSA/CSS Personnel Security File

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a (k)(1), (k)(2), (k)(5).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(2) to protect investigatory materials compiled for purposes of enforcement of Pub. L. 88-290 and title 18 U.S.C. 798 as well as other appropriate criminal and civil laws related to the protection of sensitive cryptologic information. Both statutes cited require the Director, NSA, to observe special procedures and standards in permitting access to sensitive cryptologic information and provide statutory authority to act when those standards are breached. The materials contained in this system are of an investigatory nature, are maintained on a continuing basis and are used to insure compliance with and enforcement of the cited statutes.

This system of records is exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts or access to classified information. The exemption does not limit access to that portion of the records in the system which are not exempted or otherwise protected from unauthorized disclosure.

(11) *System name:* NSA/CSS Time, Attendance, and Absence.

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

(12) *System name:* NSA/CSS Training.

Exemption: This system of records is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the limitations noted in that paragraph.

Authority: 5 U.S.C. 552a (k)(1), (k)(5), (k)(6).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system of records is exempted from all subsections cited pursuant to exemption (k)(5) to protect the identity of confidential sources of information constituting investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts or access to classified information. The exemption does not limit access to that portion of the records in the system which are not exempted or otherwise protected from unauthorized disclosure.

This system of records is also exempted from all subsections cited pursuant to exemption (k)(6) to protect those testing or examination materials used solely to determine individual qualifications for employment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(13) *System name:* NSA/CSS Archival Records.

Exemption: This system is exempted from the sections of Title 5 U.S.C. 552a cited in § 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

Authority: 5 U.S.C. 552a(k)(1) and (k)(4).

Reasons: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system is exempted from all subsections cited pursuant to exemption (k)(4) where individual records and files are maintained and used solely for statistical compliance with those requirements with a minimum of administrative burden and expense.

[40 FR 44294, Sept. 25, 1975, as amended at 45 FR 80106, Dec. 3, 1980]

SUBCHAPTER Q—CIVIL RIGHTS

PART 300—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF DEFENSE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
300.1 Purpose.
300.2 Definitions.
300.3 Application.
300.4 Policy.
300.5 Responsibilities.
300.6 Assurances required.
300.7 Compliance information.
300.8 Conduct of investigations.
300.9 Procedure for effecting compliance.
300.10 Hearings.
300.11 Decisions and notices.
300.12 Judicial review.
300.13 Effect on other issuances.
300.14 Implementation.

APPENDIX A—PROGRAMS TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1; and the laws referred to in Appendix A.

SOURCE: 29 FR 19291, Dec. 31, 1964, unless otherwise noted.

§ 300.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (referred to in this part as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

§ 300.2 Definitions.

(a) "Component" means the Office of the Secretary of Defense, a military department or a Defense agency.

(b) "Responsible Department official" means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component for the administration of the law extending such assistance.

(c) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) The term "facility" includes all or any portion of structures, equipment, or other real or personal proper-

BEST COPY AVAILABLE

ty or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(g) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

§ 300.3 Application.

This part applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the federally assisted programs and activities listed in Appendix A of this part. This directive applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This directive does not apply to: (a) Any Federal financial assistance by way of insurance guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before January 7, 1965, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as noted in § 300.4(b)(5) of this part. The fact that a program or activity is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17959, July 5, 1973]

§ 300.4 Policy.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this (part) applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) In determining the site or location of facilities, a recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(iv) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(v) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vi) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vii) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(5) Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color, or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising; employment, layoff or termination; upgrading, demotion or transfer; rates of pay and/or other forms of compensation; and use of facilities), to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a component pursuant to this provision with respect to a state or local agency subject to Standards for a Merit System of Personnel Administration, 45 CFR Part 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.

(6) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in paragraph (a) of this section.

[29 FR 1929, Dec. 31, 1964, as amended at 38 FR 17959, July 5, 1973]

§ 300.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower) shall be responsible for insuring that the policies of this part are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of Defense.

(b) The Secretary of each Military Department is responsible for implementing this part with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower) is responsible for similarly implementing this part with respect to all other components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with § 300.2(b).

(c) The Assistant Secretary of Defense (Manpower) or, after consultation with the Assistant Secretary of Defense (Manpower), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 300.11), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 300.6 Assurances required.

(a) *General* (1)(i) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (5) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part.

(ii) In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subguarantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interest therein which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subse-

quent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. In programs receiving Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(3) The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

(b) *Continuing State programs.* Every application by a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In cases of continuing State programs in which applications are not made, the extension of Federal financial assistance shall be subject to the same conditions under this subsection as if applications had been made.

(c) *Assurances from institutions.* (1) In the case of Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) *Elementary and secondary schools.* The requirement of paragraph (a), (b), or (c) of this section, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said Department officer may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act or this part within the earliest practicable time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of said order.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973]

§ 300.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973]

§ 300.8 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

(c) *Investigations.* The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in § 300.9.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Department official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1974]

§ 300.9 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceedings under State or local law.

(b) *Noncompliance with § 300.6.* If an applicant fails or refuses to furnish an assurance required under § 300.6 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* Except as provided in paragraph (b) of this section no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding, after opportunity for a hearing (as provided in § 300.10), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary of Defense pursuant to § 300.11, and (4) the expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the

Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to affect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Assistant Secretary of Defense (Manpower), (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 300.10 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 300.9, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing and submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 300.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

(c) *Hearing examiner.* The examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

(e) *Procedures.* (1) The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The

hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(f) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Assistant Secretary of Defense (Manpower), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) after consultation with the Assistant Secretary of Defense (Manpower) may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of appropriate procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 300.11.

[29 FR 19291, Dec. 31, 1964, as amended at 30 FR 133, Jan. 7, 1965]

§ 300.11 Decisions and notices.

(a) *Decision by person other than the responsible department official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 300.10(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by the Secretary of Defense.* Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Contents of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this subsection are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973]

§ 300.12 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 300.13 Effect on other issuances.

All issuances heretofore issued by any officer of the Department of Defense or its components which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(a) Executive Orders 10925 and 11114 and issuances thereunder, (b) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 FR 734, or (c) Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

§ 300.14 Implementation.

The Secretary of each Military Department shall submit regulations implementing this part to the Assistant Secretary of Defense (Manpower).

APPENDIX A—PROGRAMS TO WHICH THIS PART APPLIES

1. The Army and Air National Guard (Title 32, United States Code).

2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101-1119; 10 United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).

3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).

4. National Defense Cadet Corps Program (10 United States Code 3540(b), 4651).

5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281 (e), (f)).

6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281(h)).

7. Office of Civil Defense program (with Public Health Service) for development of instructional materials on medical self-help (50 United States Code App. 2281 (e), (f)).

8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e)).

9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281(i), 2285).

10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281(h)).

11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281(e)).

12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

13. Navy Science Cruiser Program (SecNav Instruction 5720.19A).

14. Civil Air Patrol (10 United States Code 9441).

15. Research grants made under the authority of Pub. L. 85-934 (42 United States Code 1892).

16. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of Pub. L. 85-934 (42 United States Code 1891).

17. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (33 United States Code 426).

18. Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores and beaches (33 United States Code 426e-h).

19. Public park and recreational facilities at water resource development projects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water Project Recreation Act, Pub. L. 89-72, 79 Stat. 218, July 9, 1965).

20. Payment to States of proceeds of lands acquired by the United States for flood control, navigation, and allied purposes (33 United States Code 701c-3).

21. Grants of easements without consideration, or at a nominal or reduced consideration, on lands under the control of the Department of the Army at water resource development projects (33 United States Code 558c and 702d-1; 10 United States Code 2668 and 2669); 43 United States Code 961; 40 United States Code 319).

22. Army Corps of Engineers assistance in the construction of small boat harbor projects (33 United States Code 540 and 577, and 47 Stat. 42, Feb. 10, 1932).

23. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (33 United States Code 701r).

24. Assistance to States and local interests in the development of water supplies for municipal and industrial purposes in connection with Army Corps of Engineers reservoir projects (Water Supply Act of 1958, 43 United States Code 390b).

25. Army Corps of Engineers contracts for remedial works under authority of section 111 of Act of July 3, 1958 (33 United States Code 633).

[29 FR 19291, Dec. 31, 1964, as amended at 31 FR 6831, May 7, 1966]

PART 301—EQUAL OPPORTUNITY IN OFF-BASE HOUSING

Sec.
301.1 Reissuance and purpose.
301.2 Applicability and scope.
301.3 Objectives and policies.
301.4 Responsibilities of commanders.
301.5 Information requirements.
301.6 Definitions.
301.7 Checklist for commanders.
301.8 Procedures and reports.

AUTHORITY: Sec 301, 80 Stat. 379 (5 U.S.C. 301, 10 U.S.C. 133).

SOURCE: 43 FR 23569, May 31, 1978, unless otherwise noted.

§ 301.1 Reissuance and purpose.

(a) This part is reissued to (1) revise the policies and procedures covering off-base housing and fair housing enforcement, (2) outline discrimination complaint inquiry/investigative procedures and hearing requirements, (3) update reporting requirements, and (4) emphasize liaison with other government (local, State, or Federal) agencies.

(b) Incorporates the provisions of 32 CFR Part 191 relating to equal opportunity in off-base housing and fair housing enforcement.

§ 301.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the Specified and Unified Commands, and other DoD activities (hereinafter referred to as "DoD Components") having members of the Armed Forces assigned. DoD civilian employees (as defined in § 301.6) will be offered the same services that members of the Armed Forces receive.

§ 301.3 Objectives and policies.

32 CFR Part 191 establishes the policy that the Department of Defense is fully committed to the goal of obtaining equal treatment for all DoD personnel. Specific guidance with respect to off-base housing and fair housing enforcement is as follows.

(a) *National housing policy.* Federal legislation prohibits discrimination in housing in the United States against any person because of race, color, religion, sex, or national origin.

(1) Title VIII of the Civil Rights Act of 1968 contains the fair housing provisions; outlines the responsibilities of the Secretary of Housing and Urban Development with regard to the Act; and requires all executive departments and agencies to administer housing and urban development programs and activities under their jurisdiction in a manner which will reflect "affirmatively" the furthering of the purposes to Title VIII.

(2) Title IX of the Civil Rights Act of 1968 makes it a crime to willfully intimidate or interfere with any person by force or threat because of their activities in support of fair housing.

(3) Title 42 U.S.C. 1982 states that all citizens shall have the same right as is enjoyed by white citizens to purchase, lease, sell, and convey real and personal property.

(b) *DoD fair housing policy.* The Department of Defense intends that Federal fair housing legislation be supported and that DoD personnel have equal opportunity for available housing regardless of race, color, religion, sex, or national origin.

(1) This policy includes the objective of eliminating discrimination against DoD personnel in off-base housing. This is not achieved simply by finding a place to live in a particular part of town or in a particular facility for a person from a minority group.

(2) The intent is achieved when a person who meets the ordinary standards of character and financial responsibility is able to obtain off-base housing in the same manner as any other person anywhere in the area surrounding the installation, without suffering refusal and humiliation because of arbitrary discrimination based on race, color, religion, sex, or national origin.

(i) The accomplishment of the objective shall not be hampered by requiring the submission of a formal complaint of discrimination. A suspected discriminatory act, with or without the filing of a formal complaint, is a valid basis for investigation and, if discrimination is substantiated, imposition of restrictive sanctions.

(ii) Restrictive sanctions shall be imposed for a minimum of 180 days upon substantiation that discrimination was practiced by an agent.

(iii) The fact that 42 U.S.C. 1982 and Pub. L. 90-284 may or may not provide a remedy in a given case of discrimination affecting DoD personnel does not relieve a commander of the responsibility to ensure equal treatment and equal opportunity for such personnel or to impose restrictive sanctions against the agent/facility when appropriate.

(iv) An information program to apprise DoD personnel and the civilian community of the DoD policy and program for equal opportunity in off-base housing shall be developed at each installation. Local community resources, such as civil rights organizations, religious and service groups, and local information media should be used in support of this program.

§ 301.4 Responsibilities of commanders.

Responsibilities of installation commanders are specified herein. Commanders shall:

(a) Ensure nondiscrimination in referring DoD personnel to off-base housing facilities.

(b) Continue efforts (as described in 32 CFR Parts 239a and 239b) to identify and solicit nondiscriminatory assurances for housing facilities within the commuting area which are considered to be suitable for occupancy by DoD personnel.

(c) Ensure that an office and staff as required by 32 CFR Part 239b are available to advise DoD personnel concerning:

(1) The procedures set forth in this part.

(2) The application of 42 U.S.C. 1982 and Pub. L. 90-284 in specific situations.

(3) The rights of individuals to pursue remedies through civilian channels, without recourse and in addition to the procedures prescribed herein including the right to:

(i) Make a complaint directly to the Department of Housing and Urban Development (HUD) and/or to the Department of Justice (DOJ) in the United States.

(ii) Bring a private civil action in any court of competent jurisdiction.

(d) Periodically review off-base housing procedures and policies to ensure effectiveness and compliance with this Instruction. In order to assist the commander in accomplishing this review, a checklist is provided in § 301.7.

(e) Cooperate to the fullest extent possible with other Government agencies investigating housing discrimination complaints filed by DoD personnel.

§ 301.5 Information requirements.

(a) Detailed procedures for assisting personnel, investigating housing complaints, and reporting requirements for each housing discrimination complaint are contained in § 301.8.

(b) The complaint and investigative report required in § 301.8 is exempt from formal approval and licensing pursuant to subsection VII.F., enclosure 3, of DoD directive 5000.19.[1]

(c) A semiannual report is required and is assigned RCS DD M(SA) 1146. This report is explained in section (d) of § 301.8.

§ 301.6 Definitions.

(a) *Agent.* Real estate agency, manager, landlord, or owner, as appropriate, of a housing facility doing business with Department of Defense (DoD) personnel or a Housing Referral Office (HRO).

(b) *Area outside the United States.* An area in which DoD personnel reside but which is not subject to U.S. laws or regulations.

(c) *Commander.* The military or civilian head of any installation, organization or agency of the DoD who is assigned responsibility for the off-base housing program.

(d) *Commuting area.* That area as defined in DoD Instruction 4165.45.

(e) *Complainant.* A member of an Armed Force (or authorized dependent designated by the military member) or a civilian employee of the DoD (or authorized dependent designated by the civilian employee) who submits a complaint of discrimination.

(f) *Discrimination.* An act, policy, or procedure that arbitrarily denied equal treatment in housing because of race, color, religion, sex, or national origin to an individual or group of individuals.

---

[1] Filed as part of original. Copies may be obtained if needed from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

(g) *DoD Personnel.* (1) Members of the Armed Forces (and their dependents) authorized to live off base.

(2) DoD civilian employees (and their dependents) who are transferred from one place of residence to another because of job requirements, or recruited for job opportunities away from their current place of residence in the United States, and all DoD U.S. citizen appropriated fund and nonappropriated fund civilian employees and their dependents outside the United States.

(h) *Listed facility.* A suitable housing facility (not on restrictive sanction) listed with the HRO as available for occupancy by DoD personnel and whose agent has provided a nondiscriminatory assurance.

(i) *Minority.* Any person who is or may become subject to discrimination because of race, color, religion, sex, or national origin.

(j) *Relief for the complainant.* Action taken by a commander for the benefit of a complainant.

(k) *Restrictive sanctions.* Action taken by a commander to preclude military personnel from entering into a rental, lease, or purchase arrangement with, or moving into, a housing facility, the agent of which has been found to have discriminated against DoD personnel. Restrictive sanctions are effective against the agent and the facility.

(l) *Survey.* The procedure by which the HRO identifies housing resources to ascertain the availability of housing facilities for occupancy by DoD personnel.

(m) *Verifiers.* Volunteers used by the commander during the course of a housing discrimination investigation to determine if, in fact, housing discrimination is being practiced by an agent as alleged. Verifiers are not required to be prospective tenants.

§ 301.7 Checklist for commanders.

(a) Are all assigned personnel informed of the Equal Opportunity in Off-Base Housing Program requirements prior to obtaining housing off-base?

(b) Is there an effective Equal Opportunity in Off-Base Housing information program?

(c) Are communtiy resources being used to support the Equal Opportunity in Off-Base Housing information program?

(d) Are housing discrimination complaints being processed within the required time?

(e) Are complainants being informed in writing of the results of housing discrimination inquiry/investigation actions?

(f) Are housing surveys being conducted periodically to obtain new listings?

(g) Are restrictive sanctions being imposed immediately for a minimum of 180 days on agents found to be practicing discrimination?

(h) Are the services of command representatives provided to assist applicants in their search for housing?

(i) Are HRO personnel and Equal Opportunity personnel aware of and sensitive to housing problems encountered by DoD personnel?

(j) Are Equal Opportunity in Off-Base Housing Reports being submitted accurately and on time?

§ 301.8 Procedures and reports.

(a) *Off-base housing procedures.* DoD personnel seeking off-base housing shall be (1) processed through the HRO when available (optional for DoD civilian personnel), and (2) provided assistance in seeking temporary and permanent off-base housing as follows:

(1) Counseling concerning the Equal Opportunity in Off-Base Housing Program with particular emphasis placed on the desirability to report any indication of discrimination against them in their search for housing.

(2) Counseling and personal assistance shall include the following services:

(i) Offering to check by telephone the availability of selected listings. A record shall be made and retained for future reference of the date, time and nature of any conversation confirming the availability of a facility. The race, color, religion, sex, or national origin of the applicant will not be divulged. Caution must be exercised to ensure that a pattern of "confirmation only for minorities" does not develop.

(ii) Offering the services of a command representative (such as a unit sponsor or other designated person when available) to accompany and assist the applicant in the search for housing.

(iii) Explaining various discriminating methods that may be employed by agents. For instance, if an agent arbitrarily refuses to accept or consider the applicant as a tenant, falsely indicates the unit sought has been rented to another applicant, or refuses to make the unit available under the same terms and conditions as are ordinarily applied to applicants of the facilities.

(A) In such instances the agent should be queried concerning the reasons why the unit is not available. After all reasonable steps have been taken to ascertain whether any valid nondiscriminatory reason can be shown for the agent's rejection of the applicant, and there appears to be no such reason, a reasonable effort should be made to persuade the agent to make the unit available to the applicant.

(B) The incident shall be reported immediately by the command representative and the complainant to the HRO for appropriate command action.

(b) *Complaint procedures—United States.* Commanders will ensure that all DoD personnel are informed of the scope and provisions of the DoD Equal Opportunity in Off-Base Housing Program and advised to immediately report to the HRO (when available) any form of discrimination encountered as a tenant or prospective tenant. Incidents reported to base agencies or representatives other than the HRO (for example, equal opportunity officer, unit commander, supervisor) should be brought to the immediate attention of the HRO for appropriate action. A verbal or written statement of discriminatory policy by an agent is considered to be an act or incident of discrimination and the investigative procedures outlined in this enclosure shall be followed.

(1) *Inquiry into complaint.* Complaints of off-base housing discrimination must receive prompt attention. An inquiry into the complaint will begin within 3 working days after receipt of the complaint. The inquiry may be informal but must be detailed sufficiently to indicate if discrimination occurred. Upon receipt of a discrimination complaint, the HRO (or in the event there is no HRO, a command designated representative) will take the following action:

(i) Immediately notify the commander.

(ii) Promptly interview the complainant to determine the details and circumstances of the alleged discriminatory act.

(iii) Inform HRO personnel to advise all prospective tenants that a discrimination complaint has been received against a particular agent/facility, that substantiated discrimination has not been determined, and allow prospective tenants to decide if they desire to view the facility involved.

(iv) Immediately telephone or visit the facility/agent concerned, if the complaint is received shortly after the time of the alleged act and it concerns the change in availability of a vacancy (such as, "just rented," etc.). Attempt to determine if a vacany exists without making reference to the complaint received. Request the commander to authorize the use of verifiers as necessary. (See subsection § 301.8(b)(2).)

(v) Advise the complainant of the provisions and procedures contained in this Instruction and of the right to pursue further actions through HUD, DOJ, and local, or State agencies. Coordinate effort with the judge advocate's office to determine to what extent legal assistance can be provided. Assist the complainant in completing seven signed, dated, and notarized copies of HUD Form 903, Housing Discrimination Complaint. The fact that a complainant might report an act of alleged discriminatory treatment but decline completing a HUD Form 903 does not relieve the command of responsibility for making further inquiry and taking such subsequent actions as may be appropriate.

(vi) Document the above action for future reference and inform the commander of the results of the HRO preliminary inquiry and actions taken. The commander will take action to assist the complainant in obtaining suitable housing. If, due to discriminatory practices in the community, suitable housing cannot be obtained by the complainant in a reasonable amount of time, the complainant and the commander may use this fact to justify a request for priority in obtaining military housing or for humanitarian reassignment. Reassignment action is a last resort and must be justified fully through command channels.

(2) *Use of verifiers.* Verifiers are authorized to determine if a vacancy exists and whether or not rental practices are discriminatory. Verifiers shall not be used for the sole purpose of determining sincerity or normal practices of an agent about whom the HRO has not received a housing discrimination complaint.

(i) When selecting and using verifiers, the following applies:

(A) Verification of the vacancy should be made as soon as possible after an alleged act of discrimination.

(B) Verifiers should be volunteers (the Equal Opportunity Office is a possible source for identifying individuals to be used as verifiers).

(C) The purpose of the verifier is to isolate the characteristic of race, color, religion, sex, or national origin which is the suspected basis for the complainant's exclusion. Verifiers should possess characteristics as close as possible to those of the complainant except for characteristics which are suspect as discriminatory. If two verifiers are used, one may possess similar characteristics to the complainant. Ideally, two verifiers should be used.

(ii) Instructions provided to the verifiers by HRO personnel should include the following:

(A) Explanation of the Equal Opportunity in Off-Base Housing and Off-Base Housing Referral Programs.

(B) Verifiers are to obtain information only on agent/facility operating policies, practices, and procedures for subsequent determination of complaint validity.

(C) Verifiers are not to make verbal or written contract for the apartment, pay any money, or say they want the apartment.

(D) Verifiers should be knowledgeable as the family composition, pets, and housing requirements of the complainant so they may ask for identical housing requirements.

(E) The following information should be obtained by the verifier, if possible:

(*1*) *Concerning the facility.* What is available? Did it meet the requirements of what the complainant requested? Amount of rent? Deposit required? Are children/pets accepted? Is an application required? What is the time between filing application and permission to move in? Are there minority families and/or singles in the facility? Make a note of the presence or absence of a vacancy sign, and any other information deemed appropriate.

(*2*) *Concerning the prospective tenants.* If possible, ascertain criteria and qualifications prospective tenants must meet (credit rating, salary, marital status, children, deposit, written application, and the like), and a complete description of all procedures for becoming a tenant, including all steps from initial inquiry to moving in. Does the manager's subjective impression of the applicant appear to play any part in the decision to rent an apartment?

(F) The verifier's statement should be completed immediately after the verification visit. It should be accurate, objective, and factual. Include the following:

(*1*) Date, time of visit, person contacted, position of person contacted. Include any other pertinent information obtained during visit, i.e., length of time employed at facility, in addition to the information in § 301.8(b)(2)(ii)(E).

(*2*) When reconstructing conversation, write in first person and try to use direct quotes. Do not use pronouns such as "he," "she," or "they." Clearly identify who said what to whom.

(*3*) Sign and date statement. Give full name, address, telephone number (duty or home) and race, etc., as relevant to complaint.

(3) *Complaint process.* If the basic facts of the HRO preliminary inquiry appear to substantiate the complaint,

the commander will ensure the following actions begin within 3 working days of receipt of the inquiry report:

(i) *Informal hearing.* Give written notice to the agent explaining the nature of the complaint and the agent's right to request an informal hearing with the commander. The notification will specifically state the nature of the discrimination complaint, the right of the agent to appear personally at the hearing, be represented by an attorney, and to present evidence and call witnesses. The notification will also state that the agent has 5 days after receipt of the written notice to request a hearing. If no request is received within 5 days, the lack of response will be considered as a waiver of the right to such hearing. The written notification will either be delivered to the agent personally by a representative of the commander or will be sent to the agent by certified mail with return receipt.

(A) *Composition of an informal hearing.* The informal hearing will be conducted by the commander at a convenient location. The agent, agent's attorney, the complainant, complainant's attorney, Equal Opportunity Officer, HRO, Judge Advocate, or other designated persons may attend.

(B) *Disclosure of information.* The agent (or agent's attorney) will not be given copies of the HUD Form 903, or other pertinent statements that may later be required for subsequent HUD/DOJ actions. Freedom of Information and Privacy Act considerations will be determined in accordance with the respective Military Department instructions.

(C) *Record of hearing.* A summary of the hearing will be made a part of the complaint file.

(ii) *Legal review.* A legal review will be accomplished subsequent to the inquiry and informal hearing (if applicable) and prior to the commander's final decision that the inquiry supports or fails to support the complaint. The report will be reviewed for content and completeness and a statement that such a review was conducted, signed by the judge advocate performing the review, will be made a part of the case file. The statement will include:

(A) Any necessary explanatory remarks, including comments concerning the facts and evidence presented.

(B) Information known concerning pending complaints, brought by private parties with respect to the same facility/agent.

(C) Comments pertaining to relevant civil rights laws to the particular case.

(4) *Commander's decision.* The responsibility for imposition of restrictive sanctions rests with the commander and cannot be delegated. The commander's decision will be based on a full and impartial review of all facts and the policies and requirements as stated in this part. The commander's options include:

(i) If the commander determine that more information is required, or for any reason further inquiry is deemed necessary, an officer will be appointed from sources other than the HRO to conduct a formal inquiry or investigation as the situation warrants. The officer, if not an attorney, will be afforded the advice and assistance of a judge advocate.

(ii) If, in the commander's judgment, the inquiry or investigation fails to support the complaint the case will be considered closed and the commander will:

(A) Inform the complainant in writing of all actions taken and advise the complainant of rights to pursue further actions to include:

(*1*) The right to submit a complaint to HUD and DOJ.

(*2*) The right to bring a private civil action in a State or Federal court.

(*3*) The right to obtain whatever legal assistance is appropriate and can be legally provided in pursuing civil redress.

(B) Direct HRO to terminate action outlined in § 301.8(b)(1)(iii).

(C) Summarize in the report file the practices giving rise to the complaint, the actions and results of the inquiry or investigation and a written assurance from the agent concerning future facility/agent practices. The following statement, completed by the complainant, will also be included as part of the case file: "I (am) (am not) satisfied with the efforts taken by the commander in my behalf to achieve satisfactory resolution of my off-base housing discrimination complaint." If the complainant indicates a lack of satisfaction, the reasons must be included in the case file.

(D) Inform the agent of the results of the inquiry by command correspondence if an informal hearing was held. Such correspondence should reiterate DoD policy and requirements for equal opportunity in off-base housing.

(E) Forward unsubstantiated complaint reports and HUD Form 903 to HUD and DOJ if requested by the complainant.

(F) Retain a copy of the report file for future reference.

(iii) If the inquiry or investigation supports the complainant's charge of discrimination and the discriminatory act is determined by the commander to conflict with DoD policy, the commander shall:

(A) Impose restrictive sanctions against the agent/facility for a minimum of 180 days. Sanctions will remain in effect until the provisions of § 301.8(b)(6)(i) (A) or (B) are met. Restrictive sanctions shall also be imposed when a suspected discriminatory act, despite the absence of a formal complaint, is investigated and found valid. The fact that a validated discrimination complaint/incident has been or is scheduled to be forwarded to another agency (HUD, DOJ, etc.) is not cause for withholding sanction action pending the outcome of that agency's further review or investigation. When imposing a restrictive sanction, the commander shall:

(*1*) Remove the facility listing(s) from the HRO files.

(*2*) Impose restrictive sanctions (effective the date of notification, as per paragraph (4) below) against all facilities owned or operated by the agent concerned.

(*3*) Place the facility on the restrictive sanction list maintained by the HRO. The restrictive sanction list will be prepared on official letterhead stationery, signed by the commander, and include the authority for and conditions of the restrictive sanctions.

(*4*) Inform the agent concerned, by command correspondence, that restrictive sanctions have been imposed the reasons, the nature and minimum duration of the restrictions, and the action required for their removal at the conclusion of the minimum period. The notification of restrictive sanctions may be sent by certified mail with return receipt or delivered to the agent personally by a command representative.

(*5*) Provide all DoD personnel reporting to the HRO with a copy of the restrictive sanction list, and advise members of the armed forces that they may not rent, lease, purchase or reside in any of the listed facilities. Obtain a signed acknowledgment of receipt of the restrictive sanction list using a DD Form 1668, Off-Base Housing Application.

(*6*) Advise other military installations of the restrictive sanction action taken when the sanctioned facility is located within the commuting area of the military installation.

(B) Inform the complainant in writing of all actions taken, advise the complainant that the complaint will receive continuing base action to include if the complainant requests, forwarding the case file to HUD and/or DOJ for action. The complainant will also be counseled concerning the right to pursue remedies through civilian channels other than HUD/DOJ for action. (See § 301.8 (b)(4)(ii)(A).)

(C) Prior to forwarding the report, prepare a memorandum outlining:

(*1*) The base efforts made to obtain housing relief for the complainant.

(*2*) The impact of restrictive sanctions upon the Off-Base Housing Program and DoD personnel and their dependents.

(*3*) Any other considerations deemed relevant.

(D) Include a statement, completed by the complainant, as part of the case file (see § 301.8 (b)(4)(ii)(C)).

(E) If the act of discrimination falls within existing laws, and if the complainant concurs, forward a copy of the complaint and investigation report directly to HUD within 180 days after the occurrence of the alleged discrimination act, using HUD Form 903. The original report shall be sent to Fair Housing, c/o Department of Housing and Urban Development, Washington, DC 20410. A copy of the complaint and investigation report shall be forwarded to the Department of Justice

(Civil Rights Division), Washington, DC 20530.

(F) When more than one complaint alleging discrimination in the same facility or by the same agent has been received, consolidate the complaints for the purpose of the inquiry, legal review, and commander's memorandum. The consolidated case file must include a separate HUD Form 903 from each complainant who has filed one.

(iv) When a commander receives a complaint alleging further discrimination in a facility or by an agent after a completed case file has been forwarded, the commander will forward a summary of the facts relating to the subsequent complaint, outlined in § 301.8(b)(4)(iii)(F). Include brief comments indicating the extent to which the new complaint, and information developed with respect to it, affect the previous action.

(5) *Followup actions.* Subsequent to forwarding the report and all required attachments to HUD and DOJ, it is important that the commander, to the maximum extent possible, take the following actions:

(i) Cooperate with HUD, DOJ, and local/State agency representatives during their investigation and processing of the case, should these agencies seek assistance.

(ii) Periodically determine the status of the case by maintaining liaison with the HUD area/regional office concerned. Contact will be maintained until such time as the case is resolved and/or closed by HUD.

(iii) Ensure that the complainant is kept informed on information received and actions taken by HUD/DOJ.

(iv) Ensure that DoD personnel comply with the restrictive sanctions imposed on the facility/agent.

(A) Military personnel moving into or changing the place of residence in the commuting area of a military installation or activity may not enter into a rental, purchase or lease arrangement with an agent of a facility which is under restrictive sanction.

(B) Implement procedures for ensuring that DoD personnel seeking housing are made aware of, and are counselled concerning current restrictive sanctions. HROs must also ensure that controls are effective for determining where members ultimately locate housing. As a minimum, these controls will include the careful screening of returned DD Forms 1670, Notification of Housing Selection.

(C) Sanctions are not applicable to DoD personnel who may be residing in a facility at the time the sanction is imposed or to the extension or renewal of a rental or lease agreement originally entered into prior to the imposition of the sanction. Relocation of a military tenant within a restricted facility, however, is prohibited without the written approval of the commander.

(D) If it is determined that a member of an Armed Force has intentionally taken residency in a restricted facility contrary to instructions, the commander will take appropriate disciplinary action.

(E) Periodically, publish a current listing of restricted facilities in the base bulletin (or other appropriate means of internal distribution). As a minimum, this will be done when there has been an addition, deletion, or change to the list.

(6) *Removal of restrictive sanction.* (i) A facility/agent may be removed from sanction only if one of the following actions is taken:

(A) The sanction may be removed before completion of the 180 days restrictive period if an approved waiver request is obtained from the Head of the DoD Component concerned, or his/her designee. Consideration will be given to lifting an imposed sanction only in exceptional circumstances and in concert with a written assurance of nondiscrimination from the agent concerned.

(B) After completion of 180 days on restrictive sanction, if the agent provides written assurance of future nondiscrimination to the HRO.

(ii) The commander shall inform the HRO, Race Relation/Equal Opportunity Office and the agent in writing of the removal from restrictive sanctions.

(7) *Privacy Act and Freedom of Information Act inquiries.* Requests for information regarding reports that have been referred to HUD, DOJ, and/or local or State agencies for action shall be referred to the appro-

priate agency for response. Requests for information from reports not referred to those agencies for action shall be processed in accordance with the appropriate Military Department instructions concerning the Privacy Act and Freedom of Information Act.

(c) *Complaint procedures—Outside the United States.* Commanders of installations or activities outside the United States will ensure that all DoD personnel, upon reporting to the HRO, are clearly informed of the scope and provisions of the DoD Equal Opportunity in Off-Base Housing Program and advised to immediately report to the HRO (when available) any form of discrimination encountered as a tenant or prospective tenant. Incidents reported to base agencies or representatives other than the HRO (for example, equal opportunity officer, unit commander, supervisor) should be brought to the immediate attention of the HRO for appropriate action. Upon receiving a complaint of discrimination the commander and HRO shall:

(1) Consult with staff judge advocate attorneys to determine if the laws of the country concerned (or any subdivision thereof) prohibit any of the actions outlined in § 301.8(b).

(2) Take actions outlined in § 301.8(b) except that a HUD Form 903 will not be completed as cases processed outside the United States are not forwarded to HUD or DOJ. Complainants should understand that the fair housing provisions of the Civil Rights Act are not applicable in areas outside the United States.

(3) Determine, with judge advocate advice, whether the discriminatory act can be pursued for civil redress. Redress will be based on the laws of the country (or subdivision thereof) concerned.

(d) *Reporting requirements.* (1) A copy of each complaint and investigative report that substantiates a housing discrimination shall be submitted to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) not later than 45 days from the date the case is forwarded from the installation. Under normal circumstances, the commander of the installation concerned shall complete required investigation and processing of complaints within 45 days from the date that a housing complaint is filed by a complainant. The Military Departments shall summarize and make appropriate comments to include the affirmative action taken in the case prior to submission of the report to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(2) A copy of complaint and investigative reports that do not substantiate allegations of housing discrimination shall be kept on file at the installation level for a period of 24 months. Normally, request for these reports to be forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) will be made only when other Government or civilian agencies have expressed an interest.

(3) Each military Department shall submit semiannual reports (for the periods ending June 30 and December 31) to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) no later than 60 days following the end of the reporting period. Reports will contain the following information:

(i) Total number of housing facilities (rentals and sales) surveyed during the reporting period.

(ii) Total number of housing facilities listed during the reporting period and the total number of housing facilities listed as of the last day of the reporting period.

(iii) Total number of housing facilities under restrictive sanction and total number of housing facilities restricted during the reporting period.

(iv) Total number of restrictive sanctions that were lifted prior to completion of the 180-day minimum period.

(v) Total number of discrimination complaints processed during the reporting period.

(vi) Total number of discrimination complaints forwarded to HUD/DOJ during the reporting period.

(vii) A short, narrative report summarizing servicewide significant Equal Opportunity in Off-Base Housing activities, problems, and experiences, and appropriate explanatory comments concerning the statistical portion of the report.

PARTS 302–349 [RESERVED]

SUBCHAPTER R—CHARTERS

PART 350—ASSISTANT SECRETARY OF DEFENSE (COMMUNICATIONS, COMMAND, CONTROL, AND INTELLIGENCE)

Sec.

350.1 Purpose.
350.2 Responsibilities.
350.3 Functions.
350.4 Organization and management arrangements.
350.5 Relationships.
350.6 Authority.

AUTHORITY: 10 U.S.C. 133 and 136.

SOURCE: 42 FR 15909, Mar. 24, 1977, unless otherwise noted.

§ 350.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of 10 U.S.C. 133 and 136, one of the positions of Assistant Secretary of Defense is designated the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) (hereinafter "the ASD (C^{3}I)"), with responsibilities, functions, and authorities as prescribed herein.

§ 350.2 Responsibilities.

The ASD (C^{3}I) is the principal staff assistant to the Secretary of Defense for DoD telecommunications, command and control, and intelligence resources (including related warning and reconnaissance activities). He also serves as principal staff assistant in carrying out the Secretary of Defense's responsibilities as Executive Agent of the National Communications System (NCS). For each of his assigned areas he shall:

(a) Provide advice, make recommendations, and issue guidance on DoD plans, programs, and fiscal activities.

(b) Develop policies, systems and standards for the administration and management of approved plans and programs.

(c) Initiate and review programs for carrying out approved policies.

(d) Review the quality and timeliness of products and their effectiveness for users.

(e) In conjunction with the ASD (Comptroller), review proposed programs, and the resources required to implement them, formulate budget estimates, and recommend resource allocations.

(f) Monitor the implementation of approved programs, cooperation, and mutual understanding between the other Federal agencies.

(g) Participate in those planning, programming, and budgeting activities which relate to ASD (C^{3}I) responsibilities.

(h) Exercise, subject to the direction of Director of Defense Research and Engineering, the latter's direction, authority and control over all research and development matters related to communications, command, control, and intelligence.

(i) Exercise direction, authority, and control over all DoD actions to allocate resources for intelligence activities, except those organic to combatant forces and those intelligence support activities specifically delegated to the Joint Chiefs of Staff. Authority over the intelligence activities of the Military Departments will be exercised through the Secretary of the Military Department concerned.

(j) Serve on boards, committees, and other groups pertaining to his functional areas.

(k) Perform such other duties as the Secretary of Defense may from time to time prescribe.

§ 350.3 Functions.

The ASD (C^{3}I) shall carry out the responsibilities described in § 350.2 in the following areas:

(a) Facilities, equipment, systems, and resources.

(b) Satellite activities.

(c) Command and Control Systems, including the World-Wide Military Command and Control System (WWMCCS).

(d) Telecommunications.

(e) Application and integration of ADP technology.

(f) National Communications System.

(g) Surveillance, warning, and reconnaissance related to communications, command and control or intelligence.

(h) Integration of national and tactical communications, command and control, and intelligence.

(i) Intelligence collection and processing.

(j) Communications Security (COMSEC).

(k) Electronic Counter-Countermeasures (ECCM).

(l) Such other areas as the Secretary of Defense may from time to time prescribe.

(m) Exclusion: (1) Operational direction of communications, command, control, and intelligence.

(2) Telecommunications and command control systems integral to weapons systems designed for, and usually delivered with, and as part of an aircraft, missile complex, ship, tank, etc., the cost of which are normally included in the cost of the weapons systems.

§ 350.4 Organization and management arrangements.

(a) The ASD (C^{3}I) may be assisted by such deputies as he shall appoint with the approval of the Secretary of Defense.

(b) The ASD (C^{3}I) shall provide technical guidance to the World-Wide Military Command and Control System (WWMCCS), Engineer, Joint Tactical Communications Office (TRI-TAC), and Electromagnetic Compatibility Analysis Center (ECAC).

§ 350.5 Relationships.

(a) In the performance of his duties, the ASD (C^{3}I) shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) All DoD organizations shall coordinate all matters concerning the functions cited in § 350.3 with the ASD (C^{3}I).

§ 350.6 Authority.

The ASD (C^{3}I) is hereby delegated authority to:

(a) Issue instructions and one-time directive-type memoranda which carry out policies approved by the Secretary of Defense in his assigned fields of responsibility. Instructions issued to the Military Departments will be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information and assistance, consistent with the policies and criteria of DoD Directive 5000.19 as he deems necessary.

(c) Communicate directly with the heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Directors of Defense Agencies and, through the Joint Chiefs of Staff, the Commanders of Unified or Specified Commands.

(d) Establish arrangements for DoD participation in those non-defense governmental programs for which he has been assigned primary cognizance.

(e) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 351—UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

Sec.

351.1 Purpose.
351.2 Definition.
351.3 Responsibilities.
351.4 Functions.
351.5 Relationships.
351.6 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 49 FR 9561, Mar. 14, 1984, unless otherwise noted.

§ 351.1 Purpose.

This part is reissued and, pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Under Secretary of Defense for Research and Engineering (USDR&E).

§ 351.2 Definition.

DOD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351.3 Responsibilities.

The *Under Secretary of Defense for Research and Engineering* is the Principal Staff Assistant and advisor to the Secretary of Defense for DOD scientific and technical matters, basic and applied research, environmental services, and the development and acquisition of weapon systems. The USDR&E is also the Defense Acquisition Executive with responsibilities as prescribed in DOD Directive 5000.1. For each assigned area, the USDR&E shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DOD plans and programs.

(b) Develop systems and standards for the administration and management of approved DOD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DOD policies and national security objectives and to ensure that programs and systems are designed to accommodate cross-Service operational requirements and promote modernization consistent with the readiness, sustainability, and efficiency of the Armed Forces of the United States.

(d) Review and evaluate plans and programs to ensure adherence to approved policies, standards, and resource planning guidance.

(e) Inform appropriate organizations and personnel of new and significant scientific trends or initiatives.

(f) In conjunction with the Assistant Secretary of Defense (Comptroller), review proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(g) Fulfill planning, programing, and budgeting activities related to USDR&E responsibilities, including force modernization, program unification and standardization, and cross-program efficiency.

(h) Review and evaluate recommendations on requirements and priorities.

(i) Promote coordination, cooperation, and mutual understanding of all matters related to acquisition.

(j) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on USDR&E matters outside the Department of Defense.

(k) Perform other duties as the Secretary of Defense may prescribe.

§ 351.4 Functions.

The USDR&E shall carry out the responsibilities described in § 351.3, above, for the following functional areas:

(a) Scientific and technical information.

(b) Basic and applied research.

(c) Acquisition management.

(d) Force modernization.

(e) Production and manufacturing.

(f) Industrial base resources and productivity.

(g) Defense standardization program.

(h) Design and engineering, including life-cycle considerations.

(i) Development and acquisition of weapon systems, including procurement policy and production planning.

(j) Development test and evaluation, as defined in Part 204 of this title, and review and approval of the Test and Evaluation Master Plan.

(k) Environmental services.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for systems, activities, and programs.

(m) Codevelopment, coproduction, and research interchange with friendly and allied nations, in coordination with the Under Secretary of Defense for Policy.

(n) Contract placement and administration for research, development, and weapon systems, acquisition programs.

§ 351.5 Relationships.

(a) In the performance of assigned functions, the USDR&E shall:

BEST COPY AVAILABLE

(1) Exercise direction, authority, and control over:

(i) The Assistant Secretary of Defense (Development and Support), who also shall serve as the Principal Deputy Under Secretary of Defense for Research and Engineering.

(ii) The Assistant Secretary of Defense (Research and Technology), who also shall serve as the Director, Defense Advanced Research Projects Agency.

(iii) The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C^3I), who also shall serve as the Chairman, C^3 Review Council.

(iv) The Assistant to the Secretary of Defense (Atomic Energy).

(v) The Defense Advanced Research Projects Agency, the Defense Mapping Agency, the Defense Nuclear Agency, the Defense Communications Agency, and the Defense Systems Management College.

(2) Exercise staff supervision on resource management matters over:

(i) The Defense Communications Agency, the Defense Intelligence Agency, the National Security Agency/Central Security Service, and the Defense Support Project Office.

(ii) Air Force and Navy special intelligence programs.

(iii) Defense communications and intelligence functions retained by the Military Departments.

(3) Coordinate and exchange information with other OSD officials and heads of DOD Components having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other federal agencies, whenever practicable, to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of DOD Components shall coordinate with the USDR&E all matters concerning the functions cited in § 351.4, above.

§ 351.6 Authorities.

The USDR&E is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1-M, that implement policies approved by the Secretary of Defense in the functions assigned to the USDR&E. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Obtain reports, information, advice, and assistance, consistent with DOD Directive 5000.19, as necessary in carrying out assigned functions.

(c) Communicate directly with the heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Establish arrangements for DOD participation in nondefense governmental programs for which the USDR&E is assigned primary DOD cognizance.

(e) Approve, modify, or disapprove research and development, environmental services, and acquisition programs and projects of the Military Departments and other DOD Components in assigned fields.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 351b—ASSISTANT SECRETARY OF DEFENSE (RESEARCH AND TECHNOLOGY)

Sec.

351b.1 Purpose.
351b.2 Definition.
351b.3 Responsibilities.
351b.4 Functions.
351b 5 Relationships.
351b.6 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 49 FR 9563, Mar. 14, 1984, unless otherwise noted.

§ 351b.1 Purpose.

(a) Pursuant to section 136 of Title 10, United States Code, this Part designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Research and Technology) (ASD(R&T)). Under

Part 351, this position is under the direction, authority, and control of the Under Secretary of Defense for Research and Engineering (USDR&E).

(b) Pursuant to the authority vested in the Secretary of Defense under sections 133 and 136 of Title 10, United States Code, this Part assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(R&T).

§ 351b.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351b.3 Responsibilities.

The *Assistant Secretary of Defense (Research and Technology)* is the Principal Staff Assistant and advisor to the Secretary of Defense and the USDR&E for DoD oversight of the maintenance of a superior U.S. technology base and for the improvement of the DoD approach to selecting the best technology programs to achieve and maintain a qualitative lead in deployed systems. The ASD(R&T) also serves as the Director of the Defense Advance Research Projects Agency (DARPA) and as the principal technical advisor to the USDR&E on space-related matters. For each assigned area, the ASD(R&T) shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans, programs, and fiscal activities.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Provide a management focus for space-related activities at the ASD level to ensure that activities of all Office of the USDR&E components are coordinated properly.

(d) Develop the broad architecture of the military space program.

(e) Serve as the USDR&E principal for Senior Interagency Group (Space) activities and as the USDR&E alternate on other external bodies concerning space matters.

(f) Develop programs, actions, and taskings to ensure adherence to DoD policies and national security objectives related to maintenance of a superior technology base in relation to the Soviet Union and other potential adversaries.

(g) Improve the DoD approach to selecting the best technology programs to help achieve and maintain a qualitative lead in deployed systems.

(h) Review and evaluate programs for implementing approved policies and standards.

(i) Improve the integration DARPA programs into research and development programs and plans of the Armed Forces of the United States.

(j) Participate in planning, programing, and budgeting activities related to ASD(R&T) responsibilities.

(k) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies and the civilian community.

(l) Serve on boards, committees, and other groups pertaining to ASD(R&T) functional areas.

(m) Perform such other duties as the Secretary of Defense or the USDR&E may prescribe.

§ 351b.4 Functions.

The ASD(R&T) shall carry out the responsibilities described in § 351b.3., above, for the following functional areas:

(a) Basic research.

(b) Exploratory development.

(c) Advanced engineering demonstrations.

(d) Space research, space systems, and related activities.

(e) Directed energy weapons.

§ 351b.5 Relationship.

(a) In the performance of assigned duties, the ASD(R&T) shall:

(1) Coordinate and exchange information with other OSB officials and heads of DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense and

other federal agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(R&T) on all matters related to the functions cited in § 351b.4., above.

§ 351b.6 Authorities.

The ASD(R&T) is hereby delegated authority to:

(a) Issue one-time directive-type memoranda, consistent with DoD 5025.1-M, that implement policies approved by the Secretary of Defense and the USDR&E, in functions assigned to the ASD(R&T). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees, through the USDR&E. Instructions to Unified and Sepcified Commands shall be issued through the JCS over the signature of the USDR&E.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19, as the ASD(R&T) deems necessary.

(c) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Established arrangements for DoD participation in nondefense governmental programs for which the ASD(R&T) has been assigned primary cognizance.

(e) Communicate with other government agenices, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 351c—ASSISTANT SECRETARY OF DEFENSE (DEVELOPMENT AND SUPPORT)

Sec.

351c.1 Purpose.
351c.2 Definition.
351c.3 Responsibilities.
351c.4 Functions.
351c.5 Relationships.
351c.6 Authorities.

AUTHORITY: 10 U.S.C 136.

SOURCE: 49 FR 9564, Mar. 14, 1984, unless otherwise noted.

§ 351c.1 Purpose.

(a) Pursuant to section 136 of title 10, United States Code, this Part designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Development and Support) (ASD(D&S)). Under reference (b), this position is under the direction, authority, and control of the Under Secretary of Defense for Research and Engineering (USDR&E).

(b) Pursuant to the authority vested in the Secretary of Defense under sections 133 and 136 of title 10, United States Code, this Part assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(D&S).

§ 351c.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351c.3 Responsibilities.

The *Assistant Secretary of Defense (Development and Support)* is the Principal Staff Assistant and advisor to the Secretary of Defense and the USDR&E for DoD oversight of the development and support of military capabilities represented by deployed systems and equipment with the Armed Forces of the United States. The ASD(D&S) also serves as the Principal Deputy Under Secretary of Defense for Research and Engineering (PDUSDR&E). For each assigned area, the ASD(D&S) shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans, programs, and fiscal activities, with priority on acquisition objectives (DoD Directive 5000.1, "Major System Acquisitions," March 29, 1982), to meet overall DoD needs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives.

(d) Review the quality and timeliness of products and their effectiveness for users.

(e) In conjunction with the Assistant Secretary of Defense (Comptroller), review proposed programs and the resources required to implement them, formulate budget estimates, and recommend resource allocations.

(f) Monitor the implementation of approved programs.

(g) Participate in planning, programing, and budgeting activities related to ASD(D&S) responsibilities.

(h) Serve on boards, committees, and other groups pertaining to assigned functional areas.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies and the civilian community.

(j) Perform such other duties as the Secretary of Defense or the USDR&E may prescribe.

(k) As the PDUSDR&E, exercise, subject to the direction of the USDR&E, the latter's direction, authority, and control over all research, development, and acquisition matters related to USDR&E responsibilities, aiding with daily actions and associated activities.

§ 351c.4 Functions.

The ASD(D&S) shall carry out the responsibilities described in § 351c.3, above, in the following areas:

(a) Scientific and technical information.

(b) Applied research.

(c) Design and engineering, including life-cycle considerations.

(d) Development and acquisition of weapon systems, including procurement planning and production planning.

(e) Development test and evaluation, as defined in Part 204 of this title, and review and approval of the Test and Evaluation Master Plan.

(f) Assignment and reassignment of research, engineering, and acquisition responsibility for systems, activities, and programs.

(g) Coproduction and research interchange with friendly and allied nations, in conjunction with the Under Secretary of Defense for Policy.

(h) Contract placement and administration for research, development, and weapon systems acquisition programs.

§ 351c.5 Relationships.

(a) In the performance of assigned duties, the ASD(D&S) shall:

(1) Coordinate and exchange information with other OSD officials and heads of DoD Components exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(D&S) on all matters related to the functions cited in § 351c.4, above.

§ 351c.6 Authorities.

The ASD(D&S) is hereby delegated authority to:

(a) Issue one-time directive-type memoranda, consistent with DoD 5025.1-M, "DoD Directives System Procedures," April 1981, that implement policies approved by the Secretary of Defense and the USDR&E in the functions assigned to the ASD(D&S). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees, through the USDR&E. Instructions to Unified and Specified Commands shall be issued through the JCS over the signature of the USDR&E.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary in carrying out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(D&S) has been assigned primary DoD cognizance.

(e) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 352—ASSISTANT SECRETARY OF DEFENSE (MANPOWER, INSTALLATIONS, AND LOGISTICS)

Sec.

352.1 Purpose.
352.2 Definitions.
352.3 Responsibilities.
352.4 Functions.
352.5 Relationships.
352.6 Authorities.

AUTHORITY: 10 U.S.C., Section 136.

SOURCE: 49 FR 9565, Mar. 14, 1984, unless otherwise noted.

§ 352.1 Purpose.

This Part

(a) Is reissued and designates, pursuant to section 136(b)(3) of title 10, United States Code, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(MI&L) pursuant to the authority vested in the Secretary of Defense under title 10, United States Code.

§ 352.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

(b) *Reserve Components.* Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "reserve components."

(c) *Total Force.* As used in this Directive, refers to the totality of organizations, units, and personnel (military and civilian), in both active and reserve components of the Department of Defense.

§ 352.3 Responsibilities.

The *Assistant Secretary of Defense (Manpower, Installations, and Logistics)*, as the Principal Staff Assistant and advisor to the Secretary of Defense for matters concerning military and civilian manpower and personnel, equal opportunity, weapons support, logistics, readiness, energy, installations management, conservation of resources, and economic adjustment, shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, including military mobilization preparedness objectives and Total Force planning objectives, and to ensure that programs and systems are designed to accommodate operational requirements and promote the readiness, sustainability, and efficiency of the Total Force.

(d) Review and evaluate plans and programs to ensure adherence to approved policies and standards.

(e) Participate in planning, programing, and budgeting activities related to ASD(MI&L) functions.

(f) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies, state and local governments, and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on manpower, personnel, weapons support, installations, energy, and logistics matters outside the Department of Defense.

§ 352.4 Functions.

The ASD(MI&L) shall carry out the responsibilities described in § 352.3., above, for the following functional areas for the Total Force:

(a) Total Force structure analysis as related to quantitative and qualitative manpower requirements, manpower utilization, logistics, readiness, and support.

(b) The allocation of the Total Force structure among DoD Components and between the active and reserve components within the Military Departments.

(c) Development of civilian and military manpower programs and logistics programs to meet peacetime readiness and wartime sustainability requirements of the Department of Defense.

(d) Military mobilization planning guidance and coordination of mobilization plans and their execution.

(e) Military and civilian manpower requirements analysis and resource distribution in support of peacetime operations and mobilization needs.

(f) War reserve materiel requirements analysis in support of wartime operations and mobilization.

(g) Development of construction programs to meet operational requirements.

(h) Development of programs, initiatives, and tools to enhance productivity of DoD operations.

(i) Administration and implementation of controls on military and civilian manpower strengths.

(j) Recruiting, advertising, processing, and retaining military personnel of the Armed Forces of the United States.

(k) Compensation, retired pay, per diem, travel, and transportation allowances for military and civilian personnel.

(l) Training and education of military and civilian personnel.

(m) Personnel management systems.

(n) Labor-Management relations.

(o) Nonappropriated fund instrumentalities.

(p) Commercial affairs, commissaries, and post exchanges.

(q) Morale, discipline, and welfare.

(r) Personnel requirements and utilization.

(s) Community services.

(t) Equal opportunity, equal employment opportunity, and DoD contractor compliance with equal employment opportunity requirements in government contracts.

(u) Career development.

(v) Supply management.

(w) Transportation and traffic management.

(x) Postal services.

(y) Customs inspection.

(z) Warehousing and physical distribution.

(aa) Provision of DoD resources to other agencies for law enforcement and refugee control.

(bb) Review and evaluation of the requirements of Defense System Acquisition Review Council (DSARC) weapon programs and proposed weapon systems for adequacy of readiness goals and resources, including manpower, personnel, training, logistics, installations support, reliability, maintainability, and design safety.

(cc) Accident prevention, occupational health, systems safety, and fire protection.

(dd) Environmental quality and natural resources management.

(ee) Energy.

(ff) International logistics arrangements.

(gg) Installations and real property planning, design, acquisition, maintenance, and disposal.

(hh) Military base structure and utilization.

(ii) Commercial activities, efficiency reviews, and DoD Retail Interservice Support (DRIS) Programs.

(jj) Economic adjustment.

(kk) Interagency and intergovernmental affairs.

(ll) Host nation support.

(mm) Dependent education.

(nn) Repair, overhaul, modification installation, and preventive maintenance of weapons systems, equipment, secondary items, and munitions.

(oo) Personnel, training, materiel, and facilities readiness and sustainability.

(pp) Conventional munitions quantitative sustainability requirements and inventory management, distribution, and programing.

(qq) Research and development for manpower, personnel, training, logistics, weapons support, and energy.

(rr) Post-production support.

(ss) Employee motivation and productivity.

(tt) Travel management.

(uu) Productivity-enhancing capital investments.

(vv) Automated systems.

§ 352.5 Relationships.

(a) In the performance of assigned functions, the ASD(MI&L) shall:

(1) Coordinate and exchange information with officials of DoD Components having functional responsibilities for other Total Force policies and programs and with other officials in the Department of Defense exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(3) Provide policy guidance to the Transportation Commands of the Military Departments, that is, the Military Traffic Management Command, the Military Sealift Command, and the Military Airlift Command.

(4) Provide policy and guidance on requirements and programs for construction funded by host nations under the North Altantic Treaty Organization Infrastructure Program.

(5) Exercise direction, authority, and control over the Defense Logistics Agency, Department of Defense Dependents Schools, Armed Forces Chaplains Board, DoD Explosives Safety Board, Armed Forces Pest Management Board, Defense Equal Opportunity Management Institute, Defense Advisory Committee on Women in the Services, and Office of Economic Adjustment and over the activities of the President's Economic Adjustment Committee.

(6) Provide policy guidance, goal-setting, and management supervision for the Defense Manpower Data Center, DoD Centralized Referral Activity, DoD Wage Fixing Authority Technical Staff, Logistics Systems Analysis Office, Defense Logistics Studies Information Exchange, Defense Productivity Program Office, Defense Management Journal, Military Entrance Processing Command, Joint Recruiting and Advertising Program, and the Defense Training Data and Analysis Center.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(MI&L) on all matters related to the functions cited in § 352.4, above.

§ 352.6 Authorities.

The ASD(MI&L) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD Directive 5025.1-M, that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(MI&L). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Establish and distribute civilian manpower authorizations of the DoD Components and review and approve military and civilian manpower authorization changes during program execution.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19, as necessary in carrying out assigned functions.

(d) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(e) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(MI&L) is assigned primary DoD cognizance.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 353—ASSISTANT SECRETARY OF DEFENSE (LEGISLATIVE AFFAIRS)

Sec.
353.1 Reissuance and purpose.
353.2 Definition.
353.3 Responsibilities and functions.
353.4 Relationships.
353.5 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 47 FR 32111, July 26, 1982, unless otherwise noted.

§ 353.1 Reissuance and purpose.

This part establishes, pursuant to the authority vested in the Secretary of Defense under Title 10, U.S.C., 136, one of the positions of Assistant Secretary of Defense as Assistant Secretary of Defense (Legislative Affairs) (ASD(LA)), with responsibilities, functions, and authorities as prescribed herein.

§ 353.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

§ 353.3 Responsibilities and functions.

The *Assistant Secretary of Defense (Legislative Affairs)* as the principal staff assistant to the Secretary of Defense for DoD relations with the members of Congress, shall:

(a) Provide advice and assistance concerning congressional aspects of DoD policies, plans, and programs.

(b) Coordinate actions relating to congressional consideration of the DoD legislative program.

(c) Coordinate DoD participation in congressional hearings and investigations.

(d) Assign responsibility for, and coordinate responses to, congressional inquiries.

(e) Process and coordinate requests for DoD support of congressional travel.

(f) Arrange for the designation and appearance of witnesses and provision of information at congressional hearings.

(g) Coordinate the preparation of all congressional testimony and backup material for the Secretary and Deputy Secretary of Defense.

(h) Provide for DoD processing of personal security clearances for members of congressional staffs.

(i) Perform such other duties as the Secretary of Defense may assign.

§ 353.4 Relationships.

(a) In the performance of his duties, the ASD(LA) shall:

(1) Coordinate and exchange information with DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the ASD(LA) on all matters related to the functions cited in

§ 353.5 Authorities.

The ASD(LA) is hereby delegated authority to:

(a) Issue DoD Instruction and one-time directive-type memoranda, consistent with DoD Directive 5025.1 "DoD Directives System," October 16, 1980 which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary.

(c) Communicate directly with DoD Components. Communications to the Commanders of Unified and Specified Commands shall be coordinated with the Joint Chiefs of Staff.

(d) Communicate with the Executive Office of the President, other Government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 354—DEFENSE INTELLIGENCE AGENCY

Sec.

354.1 Purpose.
354.2 Mission.
354.3 Responsibilities and functions.
354.4 Organization and administration.
354.5 Relationships.
354.6 Authorities.
354.7 Delegation of authority.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 42 FR 33734, July 1, 1977, unless otherwise noted.

§ 354.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, the Defense Intelligence Agency (hereinafter "the DIA") is hereby established with responsibilities, functions and authorities as prescribed herein.

§ 354.2 Mission.

The mission of the DIA is to satisfy, or to ensure the satisfaction of, the foreign intelligence requirements of the Secretary of Defense, the Joint Chiefs of Staff, DoD components and other authorized recipients, and to provide the military intelligence contribution to national intelligence.

§ 354.3 Responsibilities and functions.

The Director, DIA, shall advise the Secretary of Defense on intelligence matters. Under his direction and control, the DIA shall:

(a) Produce, or through tasking and coordination ensure the production of foreign intelligence required for support to the DIA mission. This function specifically includes the maintenance of a strong DoD scientific and technical intelligence program. For the purposes of this section, "production" includes the evaluation, correlation, analysis, interpretation and presentation of foreign intelligence.

(b) Provide intelligence and intelligence staff support to the Joint Chiefs of Staff in accordance with their requirements and established procedures.

(c) Ensure that adequate, timely and reliable intelligence is available to the Unified and Specified Commands.

(d) Participate in the DSARC process as established in DoD Directive 5000.2,[1] by providing the Director of Defense Research and Engineering with threat descriptions based on the information derived from intelligence and threat validation in support of systems acquisition.

(e) Supervise the DoD indications system and provide support to the National Military Command System through the National Military Intelligence Center.

(f) Validate, register, assign, recommend priorities for, and monitor the satisfaction of DoD collection requirements, including those requirements assigned under the provisions of DoD Directive S-3115.7.

(g) Provide central management for the Defense Attache 1 System.

(h) Participate in the National Photographic Interpretation Center and the Defense Special Missile and Astronautics Center.

(i) Establish, maintain and operate facilities for DoD imagery indexing, processing, duplication, evaluation exploitation and central repository services in support of DoD and other authorized recipients.

(j) Supervise a DoD-wide intelligence dissemination program and provide centralized dissemination services in support of DoD and other authorized recipients.

(k) Provide intelligence bibliography, reference library, and research services as required to fulfill the DIA mission.

(l) Operate the Defense Intelligence School.

(m) In coordination with other intelligence agencies concerned, recommend plans for intelligence operations, including plans for the use of national intelligence systems to support military operational commanders. As directed, coordinate the execution of approved intelligence operations plans.

---

[1] Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa 19120, Attention: Code 301.

(n) Subject to the staff supervision of the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) (ASD(C^{3}I)), act as manager for all aspects of Defense intelligence production within the General Defense Intelligence Program and recommend changes or improvements in collection systems to the ASD(C^{3}I).

(o) Act as management authority for all DoD intelligence information systems except those systems dedicated to signals intelligence operations and support functions falling within the scope of DoD Directive S-3115.7.

(p) Establish and operate a DoD career development program for civilian general intelligence personnel; review, coordinate, and evaluate effectiveness of career development programs for military general intelligence personnel; conduct planning and guidance activities in coordination with DoD components on these programs to meet DoD requirements. Provide technical assistance in the development and conduct of DoD general intelligence training.

(q) Provide guidance, in conformance with policies of DoD and the Director of Central Intelligence, to DoD components concerning the release of Defense intelligence information to foreign governments, international organizations and the public.

(r) Administer DoD security policies and programs to protect intelligence and intelligence sources and methods, including direction of the Defense Special Security System.

(s) Adjudicate clearance eligibility for DIA civilian personnel and eligibility for access to compartmented intelligence for all personnel assigned to OSD, OJCS, and the Defense Agencies, with the exception of NSA, including contractors and consultants.

(t) Provide representation on national and international intelligence committees, boards and working groups, as appropriate.

(u) Provide the DoD focal point for relationships with foreign intelligence services.

(v) Prepare and submit to the Secretary of Defense the DIA program and budget.

(w) Ensure that all DIA policies, plans, programs, and activities are carried out in accordance with law and the provisions of Executive Orders and other directives from higher authority establishing oversight controls on foreign intelligence activities.

(x) Report to the Inspector General for Defense Intelligence and the General Counsel, Department of Defense, any activities that raise questions of legality or propriety.

(y) Establish and conduct or recommend research development, test and evaluation programs or projects to carry out the responsibilities assigned herein.

(z) Perform such other functions and services as the Secretary of Defense may from time to time assign.

§ 354.4 Organization and administration.

(a) The Director, DIA, will be a commissioned officer of suitable general of flag rank appointed by the Secretary of Defense from officers of the Armed Forces on active duty. The DIA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(b) The Director, DIA, shall report to the Secretary of Defense and the Chairman, Joint Chiefs of Staff. The Director, DIA, shall be under the operational control of the Joint Chiefs of Staff for the purposes of:

(1) Obtaining the intelligence support required to perform the statutory and assigned responsibilities of the Joint Chiefs of Staff; and

(2) Ensuring that adequate, timely and reliable intelligence support is available to the Unified and Specified Commands.

(c) Staff supervision of the DIA for the Secretary of Defense will be exercised by the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) with respect to resources, and by the Deputy Under Secretary of Defense (Policy Review) with respect to policy.

(d) The performance of the Director, DIA, will be evaluated by the Secretary of Defense. The Chairman, JCS, shall report on performance of the Director, DIA, concurrently with the Secretary of Defense's report.

[42 FR 32537, June 27, 1977, as amended at 44 FR 36032, June 20, 1979; 45 FR 84996, Dec. 24, 1980]

§ 354.5 Relationships.

(a) In the performance of his duties the Director, DIA, shall:

(1) Coordinate actions, as appropriate, with DoD components and governmental agencies having collateral or related functions in the field of his assigned responsibilities.

(2) Maintain liaison for the exchange of information and advice with DoD components and other governmental agencies in the field of his assigned responsibilities.

(b) The Military Departments and other DoD components shall provide such support and assistance to the DIA as may be necessary for carrying out its mission.

§ 354.6 Authorities.

A delegation of the administrative authorities required by the Director, DIA, to administer and direct the operations of the Agency is contained in § 354.7. In the performance of assigned responsibilities and functions, the Director, DIA, is specifically delegated authority to:

(a) Establish, operate and control all organizations and activities assigned to DIA.

(b) Assign tasks and issue instructions and guidance to DoD components as necessary to carry out the functions assigned herein and such additional functions as may be assigned. All such assignments and issuance to a Military Department shall be through the Secretary of Defense or his designee. For activities under the cognizance of the Joint Chiefs of Staff, the Director, DIA, shall function as the intelligence staff officer of the Joint Staff and assign tasks in accordance with procedures of the Joint Chiefs of Staff.

(c) Have free and direct access to and communication with DoD components, the U.S. Intelligence Community, and other executive departments and agencies as necessary.

(d) Obtain from any DoD component such information as may be necessary for the performance of assigned functions, subject to the provisions of DoD Directive 5000.19.[1]

(e) Enter into agreements on intelligence exchanges and cooperation with foreign military intelligence services as required to fulfill the DIA mission.

§ 354.7 Delegation of authority.

Pursuant to the authority vested in the Secretary of Defense, the Director, DIA, or, in the absence of the Director, his designee, is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, authority as required in the administration and operation of DIA to:

(a) Exercise the power vested in the Secretary of Defense by 5 U.S.C. 302 and 5 U.S.C. 3101 pertaining to the employment, direction and general administration of DIA civilian personnel.

(b) Fix rates of pay for wage rate employees exempted from the Classification Act by 5 U.S.C. 5102, on the basis of rates established under the Coordinated Federal Wage System. DIA, in fixing such rates, shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense for the performance of DIA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the DoD and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903(b) and designate in writing, as may be necessary, officers and employees of DIA to perform this function.

(e) Establish a DIA Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DIA or its subordinate activities in accordance with the provisions of 5 U.S.C. 4503 and applicable Civil Service Regulations.

---

[1] See footnote to § 354.3.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450, "Government Personnel Security Program," August 5, 1954; and 32 CFR Part 156:

(1) Designate any position in DIA as a "sensitive" position;

(2) Authorize, in case of any emergency, the appointment to a sensitive position in the DIA for a limited period of time of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not terminate the services of, an employee in the interest of national security in positions within DIA.

(g) Clear DIA civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of 32 CFR Part 156 and Executive Order 11652, "Classification and Declassification of National Security Information and Material," March 8, 1972.

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DIA employees.

(i) Authorize and approve overtime work for DIA civilian officers and employees in accordance with the provisions of subchapter V, Chapter 55, title 5, U.S. Code, and applicable Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for DIA civilian employees in accordance with the Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel for military personnel assigned or detailed to DIA in accordance with Joint Travel Regulations, Volume I for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultive, advisory, or other highly specialized technical services are required in a capacity that is directly related to or in connection with DIA activities, pursuant to the provisions of 5 U.S.C. 5703.

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DIA for expense incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances when the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111).

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

(m) Establish and use imprest funds for making small purchases of material and services other than personal for DIA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Directive 5100.71,[1] "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

(n) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DIA (44 U.S.C. 3702).

(o) Establish and maintain appropriate Property Accounts for DIA, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DIA property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable in accordance with applicable laws and regulations.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DIA, pursuant to subsection III.A and V.B. of DoD Directive 5200.8,[1] "Security of Military Installations and Resources," July 29, 1980.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1,[1] "Department of Defense Directives System," October 16, 1980.

(r) Enter into support and services agreements with the Military Departments, other DoD components, or other Government agencies as required for the effective performance of responsibilities and functions assigned to DIA.

(s) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

The Director, DIA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

(t) Enter into and administer contracts, directly or through another DoD Component or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the Defense Intelligence Agency. Contracting will be accomplished in accordance with applicable laws, DoD regulations and the Defense Acquisition Regulation. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of the Military Department, such authority will be exercised by the appropriate Under Secretary of Defense.

[42 FR 33734, July 1, 1977, as amended at 45 FR 84996, Dec. 24, 1980]

PART 355—DIRECTOR OF POLICY REVIEW

Sec.

355.1 Purpose.
355.2 Responsibilities.
355.3 Functions.
355.4 Relationships.
355.5 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 42 FR 36996, July 9, 1977, unless otherwise noted.

§ 355.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, United States Code, the position of Director of Policy Review is hereby established with responsibilities, functions, and authorities as prescribed herein.

§ 355.2 Responsibilities.

The Director of Policy Review is the principal staff assistant to the Secretary of Defense for Defense Policy as it relates to communications and intelligence analysis, requirements and priorities, as well as other policy matters as determined by the Secretary of Defense. For each of his assigned areas the Director shall:

(a) Develop Department of Defense communications and intelligence policy and means to verify response to policy.

(b) Confirm requirements for research, development and systems acquisition for intelligence analysis and production, intelligence collection and communications.

(c) In accordance with existing guidelines determine priorities for Defense intelligence collection and establish guidelines for the assembly, integration and validation of all Defense intelligence requirements.

(d) Exercise staff supervision on policy matters over the defense Intelligence Agency, the National Security Agency, the Defense Mapping Agency, the Defense Communications Agency, Air Force and Navy special intelligence programs, Defense communications and intelligence functions retained by the Military Departments, and, in conjunction with the Assistant Secretary of Defense (Comptroller), the Defense Investigative Service.

---

[1] See footnote to § 354.7(m).

(e) Provide staff support for the Defense Intelligence Advisory Board.

(f) Conduct liaison with the Joint Staff and Unified and Specified Commands on policy matters related to his areas of responsibility.

(g) Develop Department of Defense policy and requirements for use of space for matters related to his areas of responsibility.

(h) Provide to the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) requirements for intelligence and communications programs.

(i) Oversee Department of Defense participation in sensitive intelligence matters, including contracts or arrangements with other countries; cooperate with the Assistant Secretary of Defense (International Security Affairs) with respect to review of intelligence matters related to the Special Coordinating Committee (Intelligence).

(j) Provide guidance, oversight, and coordination for intelligence-related programs and issues.

(k) Participate in studies and analyses involving communications or intelligence policy matters and other matters as directed by the Secretary of Defense.

(l) Serve on boards, committees, and other groups pertaining to his functional areas.

(m) Perform such other duties as the Secretary of Defense may from time to time prescribe.

§ 355.3 Functions.

The Director of Policy Review shall carry out the responsibilities described in § 355.2 in the following areas:

(a) Intelligence planning, policy and requirements.

(b) Communications planning, policy and requirements.

(c) Requirements for intelligence production, research, development, and systems acquisition.

(d) Intelligence collection and analysis requirements and priorities.

(e) Consolidated Defense Intelligence Program.

(f) National and tactical intelligence.

(g) Counterintelligence and security policy.

(h) Mapping, charting and geodesy.

(i) Sensitive intelligence (HUMINT and TECHNICAL).

(j) Liaison with users.

(k) Such other areas as the Secretary of Defense may from time to time prescribe.

§ 355.4 Relationships.

(a) In the performance of his duties, the Director of Policy Review shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services whenever practicable to achieve maximum efficiency and economy.

(b) All DoD organizations shall coordinate all matters concerning the responsibilities cited in § 355.2 with the Director of Policy Review.

§ 355.5 Authorities.

The Director of Policy Review is hereby delegated authority to:

(a) Issue instructions and one-time directive-type memoranda which carry out policies approved by the Secretary of Defense, in his assigned fields of responsibility. Instructions issued to the Military Departments will be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information and assistance consistent with the policies and criteria of DoD Directive 5000.19, as he deems necessary.

(c) Communicate directly with the heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Directors of Defense Agencies, and, through the Joint Chiefs of Staff, the Commanders of Unified and Specified Commands.

(d) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 356—WASHINGTON HEADQUARTERS SERVICES

Sec.
356.1 Purpose.
356.2 Mission.
356.3 Organization and management.
356.4 Functions and responsibilities.
356.5 Relationships.
356.6 Authorities.
356.7 Delegations of Authority.

AUTHORITY: 10 U.S.C. Chapter 4, sec. 133(d).

SOURCE: 42 FR 57312, Nov. 2, 1977, unless otherwise noted.

§ 356.1 Purpose.

Pursuant of the authority vested in the Secretary of Defense under the provisions of Title 10, U.S.C. section 133(d), this part establishes the Washington Headquarters Services (hereafter referred to as "WHS") with responsibilities, functions, authorities, and relationships as outlined below.

§ 356.2 Mission.

The WHS shall provide administrative and operational support to specified Department of Defense activities in the National Capital Region (NCR).

§ 356.3 Organization and management.

(a) The WHS is established as an Office, Secretary of Defense field activity. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) The Deputy Assistnat Secretary of Defense (Administration) shall serve as the Director, WHS.

§ 356.4 Functions and responsibilities.

The Director, WHS, shall:

(a) Organize, direct, and manage the WHS and all resources assigned to the WHS.

(b) Provide administrative support to the Office of the Secretary of Defense (OSD), OSD field activities, and those Defense Agencies and specified joint activities in the NCR which do not have an internal administrative support capability. This support shall include:

(1) Budget and accounting;

(2) Civilian and military personnel management;

(3) Officer services;

(4) Security;

(5) Correspondence, cables, directives and records management;

(6) Travel; and

(7) Other miscellaneous administrative support as required.

(c) Administer information and data systems in support of the OSD decision and policymaking processes. This includes management information collection and reports preparation in the areas of procurement, logistics, manpower, and economics.

(d) Provide computer services and associated support to OSD, to include: Validation of ADP requirements, management and control of ADP resources, systems development and operation, and the provision of consulting services.

(e) Manage DoD occupied GSA controlled administrative space in the NCR and DoD common support facilities. This includes: Office space, concessions, layout design, and other related building administration functions.

§ 356.5 Relationships.

In the performance of his duties, the Director, WHS shall:

(a) Coordinate with concerned elements of the Office of the Secretary of Defense and other DoD Components having collateral or related functions in the field of his assigned responsibility.

(b) Exchange information and advice with concerned elements of the Office of the Secretary of Defense and other DoD Components.

(c) Use established facilities in the Office of the Secretary of Defense and other DoD Components to avoid duplication.

(d) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission assigned to the WHS.

§ 356.6 Authorities.

The Director, WHS is specifically delegated authority to:

(a) Obtain such information, consistent with the policies and criteria of

BEST COPY AVAILABLE

DoD Directive 5000.19,[1] advice, and assistance from DoD Components as he deems necessary.

(b) Communicate directly with appropriate personnel in the Military Departments or other Components on matters related to WHS responsibilities and functions.

(c) Exercise the operational and administrative authorities contained in § 356.7.

§ 356.7 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, WHS, or, in the absence of the Director, the person acting for him, is hereby delegated authority, with respect to the WHS and activities receiving administrative support from the WHS to:

(a) Exercise the power vested in the Secretary of Defense by 5 U.S.C. 302 and 5 U.S.C. 3101 pertaining to the employment, direction and general administration of civilian personnel.

(b) Fix rates of pay for wage rate employees exempt from the Classification Act by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, WHS, shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the DoD and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903(b).

(e) Establish an Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government for suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, in accordance with the provisions of 5 U.S.C. 4503 and applicable Civil Service Regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450; and 32 CFR Part 156:

(1) Designate positions as "sensitive";

(2) Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not terminate the services of, an employee in the interest of national security.

(g) Clear civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of DoD Directive 5210.8[1] and Executive Order 11652.

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)).

(i) Authorize and approve overtime work for civilian officers and employees in accordance with the provisions of subchapter V, Chapter 55, Title 5, U.S. Code, and applicable Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for civilian employees in accordance with the Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel for military personnel in accordance with

---

[1] Filed as part of original. Single copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 301.

[1] See footnote 1 to § 356.6.

BEST COPY AVAILABLE

Joint Travel Regulations, Volume I for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required, pursuant to the provisions of 5 U.S.C. 5703.

(k) Approve the expenditures of funds available for travel by military personnel for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances when the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111).

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

(m) Establish and use imprest funds for making small purchases of material and services, other than personal, when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DoD Directive 5100.71.[1]

(n) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals consistent with 44 U.S.C. 3702.

(o) Establish and maintain appropriate property accounts, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of this part, pursuant to subsection III.A. and V.B. of DoD Directive 5200.8.[1]

(q) Establish and maintain, for the Department of Defense, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1.[1]

(r) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies as required for the effective performance of assigned responsibilities and functions.

(s) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment and services required to accomplish assigned responsibilities and functions. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(t) Approve contractual instruments for commercial-type concessions at the Seat of Government, and maintain general supervision over commercial-type concessions operated by or through the Department of Defense at the Seat of Government, in accordance with the provisions of DoD Directive 5120.18.[1]

(u) Act as custodian of the seal of the Department of Defense and attest to the authenticity of official records of the Department of Defense under said seal (10 U.S.C. 132).

The Director, WHS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation. These delegations of authority are effective immediately.

PART 357—DEFENSE CONTRACT AUDIT AGENCY

Sec.

357.1 Purpose.
357.2 Mission.
357.3 Organization and management.
357.4 Responsibilities and functions.
357.5 Authority.
357.6 Relationships.
357.7 Administration.

---

[1] See footnote 1 to § 356.6.

Sec.
357.8 Delegations of authority.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 32755, July 28, 1978, unless otherwise noted.

§ 357.1 Purpose.

Pursuant to authority vested in the Secretary of Defense under the provisions of title 10, United States Code, this part establishes the Defense Contract Audit Agency (hereafter referred to as "DCAA") with responsibilities, functions, authorities, and relationships as outlined below.

§ 357.2 Mission.

DCAA shall: (a) Perform all necessary contract audit for the Department of Defense and provide accounting and financial advisory services regarding contracts and subcontracts to all Department of Defense components responsible for procurement and contract administration. These services will be provided in connection with negotiation, administration, and settlement of contracts and subcontracts.

(b) Provide contract audit service to other Government agencies as appropriate.

§ 357.3 Organization and management.

(a) DCAA is established as a separate agency of the Department of Defense under the direction, authority and control of the Assistant Secretary of Defense (Comptroller). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) No separate contract audit organization independent of the DCAA shall be established in the Department of Defense.

§ 357.4 Responsibilities and functions.

The Director, DCAA, shall: (a) Organize, direct, and manage the DCAA and all resources assigned to the DCAA.

(b) Assist in achieving the objective of prudent contracting by providing DoD officials responsible for procurement and contract administration with financial information and advice on proposed or existing contracts and contractors, as appropriate.

(c) Audit, examine and/or review contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control; accounting, costing, and general business practices and procedures; to the extent and in whatever manner is considered necessary to permit proper performance of the other functions described in (d) through (l) of this section.

(d) Examine reimbursement vouchers received directly from contractors, under cost-type contracts, transmitting those vouchers approved for payment to the cognizant disbursing officer and issuing DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with a copy to the cognizant contracting officer, with respect to costs claimed but not considered allowable. Where the contractor disagrees with a suspension or disallowance action by DCAA, and the difference cannot be resolved, the contractor may appeal in writing to the Administrative Contracting Officer (ACO) who will make his determination in writing. In addition, the contracting officer may direct the issuance of DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with respect to any cost which he has reason to believe should be suspended or disapproved.

(e) Provide advice and recommendations to procurement and contract administration personnel on:

(1) Acceptability of costs incurred under redeterminable, incentive and similar type contracts.

(2) Acceptability of incurred costs and estimates of cost to be incurred as represented by contractors incident to the award, negotiation, modification, change, administration, termination, or settlement of contracts.

(3) Adequacy of financial or accounting aspects of contract provisions.

(4) Adequacy of contractors' accounting and financial management systems, adequacy of contractors' estimating procedures and adequacy of property controls.

(f) Assist responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors.

(g) Direct audit reports to the Government management level having authority and responsibility to take action on the audit findings and recommendations.

(h) Cooperate with other appropriate Department of Defense components on reviews, audits, analyses, or inquiries involving contractors' financial position or financial and accounting policies, procedures, or practices.

(i) Establish and maintain liaison auditors as appropriate at major procuring and contract administration offices.

(j) Review General Accounting Office reports and proposed responses thereto which involve significant contract or contractor activities for the purpose of assuring the validity of appropriate pertinent facts contained therein.

(k) In an advisory capacity, attend and participate, as appropriate, in contract negotiation and other meetings which contract cost matters, audit reports, or related financial matters are under consideration.

(l) Provide assistance, as requested in the development of procurement policies and regulations.

(m) Perform such other functions as the Assistant Secretary of Defense (Comptroller) may from time to time prescribe.

§ 357.5 Authority.

The Director, DCAA, is specifically delegated authority to:

(a) Have free and unrestricted access to and direct communication with all elements of the Department of Defense and other executive departments and agencies as necessary.

(b) Establish Defense Contract Audit Agency facilities using appropriate established physical facilities and services of other DoD components whenever practicable to achieve maximum efficiency and economy.

(c) Obtain such information, consistent with the policies and criteria of DoD directive 5,000.19,[1] advice, and assistance from DoD components as he deems necessary.

(d) Exercise the administrative authorities contained in § 357.8 of this part.

§ 357.6 Relationships.

(a) In the performance of his functions, the Director, DCAA, shall:

(1) Maintain appropriate liaison with other components of the DoD, other agencies of the executive branch, and the General Accounting Office for the exchange of information and programs in the field of assigned responsibilities.

(2) Make full use of established facilities in the Office of the Secretary of Defense, other DoD components, and other governmental agencies rather than unnecessarily duplicating such facilities.

(3) The military departments and other DoD components shall provide support, within their respective fields of responsibility, to the Director, DCAA to assist in carrying out the assigned responsibilities and functions of the Agency. Programing, budgeting and financing for such support will be in accordance with policies and procedures prescribed by the Assistant Secretary of Defense (Comptroller).

(b) Procurement and contract administration activities of the DoD components shall utilize audit services of the DCAA to the extent appropriate in connection with the negotiation, administration, and settlement of contract payments and prices which are based on cost (incurred or estimated), or on cost analysis.

§ 357.7 Administration.

(a) The Director, DCAA, shall be a civilian selected by the Secretary of Defense.

(b) The apointment of other personnel to the Agency will be subject to the approval of the Director, DCAA.

(c) DCAA will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

BEST COPY AVAILABLE

§ 357.8 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, DCAA, or, in the absence of the Director the person acting for him, is hereby delegated authority as required in the administration and operation of DCAA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b) and 3101 pertaining to the employment, direction and general administration of DCAA civilian personnel.

(b) Fix rates of pay for wage board employees exempted from Civil Service classification by 5 U.S.C. 5102(c)(7) on the basis of prevailing rates for comparable jobs in the locality where each installation is located.

(c) Establish advisory committees and employ part-time advisers pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), the Federal Advisory Committee Act, and the Agreement between the Department of Defense (DoD) and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DCAA to perform this function.

(e) Establish a DCAA incentive awards board and pay cash awards to, and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments or other personal efforts, including special acts or services, benefit or affect DCAA or its subordinate activities in accordance with the provisions of 5 U.S.C. 4503 and Civil Service Regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450, dated April 27, 1953, as amended; and DoD directive 5210.7, "Department of Defense Civilian Applicant and Employee Security Program," September 2, 1966:

(1) Designate any position in DCAA as a "sensitive" position;

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not to terminate the services of an employee in the interest of national security in positions within DCAA.

(g) Clear DCAA personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of DoD directive 5210.8, "Policy on Investigation and Clearance of DoD Personnel for Access to Classified Defense Information," February 15, 1962, and of Executive Order 11652, dated March 8, 1972, as amended.

(h) Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954 and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954 and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DCAA employees.

(i) Authorize and approve overtime work for DCAA civilian officers and employees in accordance with the provisions of the Federal Personnel Manual Supplement 990-1, Section 550-111.

(j) Authorize and approve:

(1) Travel for DCAA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, DoD Civilian Personnel;

(2) Temporary duty travel only for military personnel assigned or detailed to DCAA in accordance with Joint Travel Regulations, Volume 1, Members of Uniformed Services; and

(3) Invitational travel to persons serving without compensation whose consultive, advisory or other highly specialized technical services are re-

quired in a capacity that is directly related to, or in connection with DCAA activities, pursuant to the provisions of 5 U.S.C. 5703.

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DCAA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(l) Develop, establish and maintain an active and continuing records management program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102), the Freedom of Information Act program (5 U.S.C. 552) and the Privacy Act program (5 U.S.C. 552a).

(m) Establish and use imprest funds for making small purchases of material and services other than personal for DCAA when it is determine more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973, and the Joint Regulation of the General Services Administration/Treasury Department/General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

(n) Authorize the publication of advertisements, notices or proposals in newspapers, magazines or other public periodicals as required for the effective administration and operation of DCAA (44 U.S.C. 3702).

(o) Establish and maintain appropriate property accounts for DCAA and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for DCAA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DCAA, pursuant to subsections III.A and V.B. of DoD Directive 5200.8, "Authority of Military Commanders Under the Internal Security Act of 1950 to Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command," August 20, 1954.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directive System," November 18, 1977.

(r) Enter into support and service agreements with the military departments, other DoD agencies, or other Government agencies as required for the effective performance of responsibilities and functions assigned to DCAA.

PART 358—DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Sec.

358.1 Purpose.
358.2 Mission.
358.3 Organization and management.
358.4 Responsibilities and functions.
358.5 Authority.
358.6 Relationships.
358.7 Administration.
358.8 Delegations of authority.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 32757, July 28, 1978, unless otherwise noted.

§ 358.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, this part establishes the Defense Advanced Research Projects Agency (hereafter referred to as "DARPA") with responsibilities, functions, authorities and relationships as outlined below.

§ 358.2 Mission.

DARPA shall manage and direct the conduct of selected advanced basic and applied research and development projects for the Department of Defense.

§ 358.3 Organization and management.

DARPA is established as a separate agency of the Department of Defense under the staff and operational direction of the Under Secretary of Defense for Research and Engineering. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 358.4 Responsibilities and functions.

The Director, DARPA, shall:

(a) Organize, direct, and manage the DARPA and all resources assigned to the DARPA.

(b) Provide guidance and assistance, as appropriate, to all DoD Components and other U.S. Government activities on matters pertaining to the projects assigned to the DARPA.

(c) Recommend to the Secretary of Defense, through the Under Secretary of Defense for Research and Engineering, the assignment of research projects to DARPA.

(d) Arrange for the performance of and supervise the work connected with DARPA projects assigned to the Military Departments, other U.S. Government activities, individuals, private business entities, educational institutions, or research institutions, giving consideration to the primary functions of the Military Departments.

(e) Engage in assigned advanced research projects.

(f) Keep the Under Secretary of Defense for Research and Engineering, the Military Departments, the Joint Chiefs of Staff, and other DoD Agencies informed, as appropriate, on significant new developments, breakthroughs, and technological advances within assigned projects and on the status of such projects in order to facilitate early operational assignment.

(g) Prepare and submit to the Assistant Secretary of Defense (Comptroller), in accordance with established procedures, the DARPA annual program-budget estimates, to include the assignment of appropriation program priorities.

(h) Perform such other functions as may be assigned by the Under Secretary of Defense for Research and Engineering.

§ 358.5 Authority.

The Director, DARPA, is specifically delegated authority to:

(a) Place funded work orders with the Military Departments and other DoD Components or directly with subordinate echelons of the Military Departments, after clearance with the Secretary of the Military Department concerned.

(b) Authorize the allocation, as appropriate, of funds made available to DARPA for assigned advanced projects.

(c) Establish for DARPA, the Military Departments, and other research and development activities, such procedures required in connection with work being performed for DARPA consistent with policies and instructions governing the Department of Defense.

(d) Acquire or construct, through a Military Department or other U.S. Government agency, such research, development, and test facilities and equipment required to carry out his assignments and that may be approved by the Secretary of Defense in accordance with applicable statutes and DoD Directives.

(e) Exercise the administrative authorities contained in § 358.8 of this part.

§ 358.6 Relationships.

(a) In the performance of his functions, the Director, DARPA, shall:

(1) Coordinate actions, as appropriate, with the other Components of DoD having collateral or related functions in the field of his assigned responsibility.

(2) Maintain active liaison for the exchange of information and advice in the field of his assigned responsibility with all DoD Components, non-DoD research and development institutions (including private business entities), educational institutions, and other U.S. Government activities.

(3) Make full use of established facilities in the Office of the Secretary

of Defense, other DoD Components, and other Governmental agencies rather than unnecessarily duplicating such facilities.

(b) Officials of all DoD Components will provide support, within their respective fields of responsibility, to the Director, DARPA as may be necessary to carry out the assigned responsibilities and functions of his Agency.

§ 358.7 Administration.

(a) The Director, DARPA, shall be a civilian selected by the Secretary of Defense.

(b) DARPA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign personnel to DARPA in accordance with approved authorizations and procedures for assignment to joint duty.

(d) Administrative support required for DARPA will be provided by the Director, Washington Headquarters Services, and other DoD Components, as appropriate.

§ 358.8 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, DARPA, or, in the absence of the Director the person acting for him, is hereby delegated authority as required in the administration and operation of DARPA to:

(a) Designate any position in DARPA as a "sensitive" position, in accordance with the provisions of the Act of August 26, 1950, as amended (5 U.S.C. 7532); Executive Order 10450, dated April 27, 1953, as amended by Executive Orders 10491, 10531, 10458, 10550, and DoD Directive 5210.7, dated September 2, 1966.

(b) Authorize and approve overtime work for DARPA civilian officers and employees in accordance with the provisions of the Federal Personnel Manual Supplement 990 1, section 550.111.

(c) Authorize and approve:

(1) Travel for DARPA civilian officers and employees in accordance with the Joint Travel Regulations, volume 2, Department of Defense, Civilian Personnel;

(2) Temporary duty travel only for military personnel assigned or detailed to DARPA in accordance with the Joint Travel Regulations, volume I, members of the uniformed services; and

(3) Invitational travel to persons serving without compensation whose consultive, advisory, or other specialized technical services are required in a capacity that is directly related to, or in connection with, DARPA activities, pursuant to the provisions of United States Code 5703.

(d) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DARPA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(e) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102), the Freedom of Information Act Program (5 U.S.C. 552) and the Privacy Act Program (5 U.S.C. 552a).

(f) Enter into and administer contacts, through a Military Department or other U.S. Government department or agency, as appropriate, for research and development, supplies, equipment, and services required to accomplish the mission of DARPA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at a higher level in the Department of Defense, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(g) Establish and use Imprest Funds for making small purchases of material and services, other than personal, when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DoD Instruction 5100.71, "Delegations of Authority and Regulations Relating to

Cash Held at Personal Risk Including Imprest Funds," March 5, 1973 and the Joint Regulation of the General Services Administration/Treasury Department/General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

(h) Authorize the publication of advertisements, notices, or proposals in public periodicals as required for the effective administration and operation of DARPA (44 U.S.C. 3702).

(i) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DARPA pursuant to subsections III.A. and V.B. of DoD Directive 5200.8, "Authority of Military Commanders Under the International Security Act of 1950 To Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command," August 20, 1954.

(j) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, November 18, 1977.

(k) In coordination with the Deputy Assistant Secretary of Defense (Administration), enter into interservice support agreements in accordance with DoD Directive 4000.19, "Basic Policies and Principles for Interservice, Interdepartmental and Interagency Support," March 27, 1972.

(l) Establish and maintain appropriate Property Accounts for DARPA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DARPA property contained in the authorized Property Accounts that have been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

PART 359—DEFENSE LOGISTICS AGENCY

Sec.

359.1 Purpose.
359.2 Mission.
359.3 Organization and management.
359.4 Responsibilities.
359.5 Functions.
359.6 Authority.
359.7 Relationships.
359.8 Administration.
359.9 Delegation of authority.
359.10 Relationship between commanders of unified commands and overseas elements of the Defense Logistics Agency.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 32759, July 28, 1978, unless otherwise noted.

§ 359.1 Purpose.

Pursuant to authority vested in the Secretary of Defense under the provisions of title 10, United States Code, this part established the Defense Logistics Agency (hereafter referred to as "DLA") with responsibilities, functions, authorities, and relationships as outlined below.

§ 359.2 Mission.

DLA shall:

(a) Function as an integral element of the defense military logistics system and, as such, direct its efforts and operations toward logistics support of the mission of the military departments and the unified and specified commands under all conditions of peace and war.

(b) Provide effective and economical support to the Military Departments, other DoD Components, Federal civil agencies, foreign governments, and others as authorized, for assigned:

(1) Materiel commodities and items of supply (hereafter referenced as "items"), which are determined, through application of approved DoD criteria, to be susceptible of integrated management by a single agency for all of the military departments or as otherwise assigned.

(2) Logistics services directly associated with the supply management function and other support services as directed by the Secretary of Defense.

(c) Administer the operation of DoD programs as assigned.

§ 359.3 Organization and management.

(a) DLA is established as a separate agency of the Department of Defense under the direction, authority and control of the Assistant Secretary of

Defense (Manpower, Reserve Affairs and Logistics) (hereafter referred to as "ASD(MRA&L)"). DLA activities involving acquisition policy and related matters will be closely coordinated with, and generally monitored by, the Under Secretary of Defense for Research and Engineering.

(b) DLA shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 359.4 Responsibilites.

The Director, DLA, shall be responsible for:

(a) Organizing, directing, and managing the DLA and all resources assigned to the DLA.

(b) Providing responsible, effective, and economical support to:

(1) The military departments and other DoD components.

(2) Federal civil agencies.

(3) Foreign governments, and others, as authorized.

(c) Monitoring DoD supply relationships with the General Services Administration (GSA).

(d) The management (including organization, direction, procurement, administration, supervision, and control) of assigned items, services, and programs.

(e) A wholesale distribution system for assigned items.

(f) Providing assigned contract administration service in support of the military departments, other DoD components, Federal civil agencies, and when authorized, to foreign governments and others.

(g) Systems analysis and design, procedural development, and maintenance for supply and service systems.

§ 359.5 Functions.

The Director, DLA, shall perform the following functions:

(a) *Coordinated procurement.* (1) Administer the DoD Coordinated Procurement Program.

(2) Recommend criteria and maintain procedures for coordinated procurement assignments of all DoD components.

(3) Make recommendations on new coordinated procurement assignments and changes to existing assignments for all DoD components.

(4) Review and evaluate the operation of the DoD Coordinated Procurement Program, and make changes as required and as authorized, to improve the effectiveness of the operation.

(5) Conduct coordinated procurement as assignee for designated commodities.

(b) *Cataloging.* (1) Administer the Federal catalog system.

(2) Develop, review, and control the operating procedures, rules, and regulations for the Federal catalog system pertaining to item classification, identification, Federal stock number assignment, and central file maintenance. Based upon analysis of Federal catalog system operation, recommend to the ASD(MRA&L) new and revised policies to improve the system.

(3) Develop and maintain the central, single, official record of Federal catalog data for all items of supply in the Federal catalog system, including all identification and classification data and those elements of management data appropriately contained therein.

(4) Ensure the exclusive use of Federal catalog data in the preparation, publication, distribution, and maintenance of the DoD sections of the Federal catalog, and that the publication of Identification and management data lists if fully synchronized.

(5) Furnish to the military departments, Defense Supply Centers, civil agencies, NATO countries, and other friendly foreign governments such Federal catalog data as are required and requested for item identification, classification, and maintenance of the Federal catalog system. This includes such management data as are centrally recorded and utilized by the military departments and civil agencies for the publication of management data lists.

(6) Prepare and publish on a centralized basis, for all DoD users, identification lists and cross-reference lists in a standard DoD format.

(7) Operate as the single submitting activity in the Federal supply groups and classes assigned to DLA, and prepare item identification for NATO and

other friendly foreign governments, as assigned.

(8) Represent the DoD, as required, in negotiations with Federal civil agencies, NATO, and other friendly foreign governments, industry, and other nondefense activities, in matters concerning the administration of the Federal catalog system.

(c) *Excess and Surplus Disposal (Personal Property).* (1) Administer the DoD Excess, Surplus, and Foreign Excess Personal Property Disposal Program in CONUS and overseas in accordance with DoD policy.

(2) Represent the DoD as required in negotiations with other Federal departments and agencies on matters of mutual interest in the disposal of excess, surplus and foreign excess personal property.

(3) Develop, review and prescribe techniques, systems and procedures for preparation and disposal of excess, surplus and personal property, including foreign excess. Recommend to the ASD(MRA&L) as appropriate, revisions to DoD policies.

(4) In coordination with the military departments, develop and establish workload, performance and cost standards for all CONUS activities that are reimbursed from surplus sales proceeds. Exercise supervision of the program level of individual disposal activities through adherence to such established standards. Assist in establishment of the reimbursable obligation authority required for the disposal activity program of each DoD component, by recommending program levels by individual activity and changes thereto when appropriate, as a result of analyses carried out during the year.

(5) Maintain a reporting system for DoD worldwide excess and surplus personal property, including foreign excess, and prepare reports as required. Recommend to the Assistant Secretary of Defense (Comptroller) any necessary refinements to the specificity of the expenses authorized to be reimbursed from proceeds of surplus sales.

(6) Direct, manage and operate defense surplus sales offices.

(7) Administer a consolidated holding activity program within CONUS with authority to determine the disposal activities required and resolve differences.

(d) *Utilization (Personal Property and Retail Interservice Support).* (1) Administer the Defense Materiel Utilization Program in CONUS and overseas in accordance with DoD policy.

(2) Develop systems and procedures for, and recommend to the ASD(MRA&L) assignments of responsibility to the military departments to assure the cross-utilization of assets in order to minimize new procurement, stockage and transportation costs.

(3) Review and evaluate the operation of assigned utilization responsibilities and make changes as required to improve the effectiveness of operations.

(4) Administer the Defense Retail Interservice Logistic Support Program, in coordination with military departments and other DoD components, as prescribed by DoD policies.

(5) Prepare and disseminate reports on operation of the Defense Materiel Utilization Program and the Defense Retail Interservice Logistic Support Program, as required.

(e) *Systems Analysis and Design.* (1) Conduct analyses, as directed by the Secretary of Defense, of the operations of the supply and service systems of the military departments in order to recommend improvements in integrated management techniques.

(2) Design and implement improved supply and service systems for the management responsibilities assigned to DLA.

(3) Develop plans, systems, and procedures to assure a close and responsive relationship between DLA operations and the war plans and logistics requirements of the Joint Chiefs of Staff and the military departments.

(4) Design and implement DLA systems to insure effectiveness, reliability and survivability in time of war or emergencies.

(5) Review and evaluate the operation of the supply and service systems assigned to DLA and make changes, as required, to improve the effectiveness of operations.

(6) Perform analysis, design, maintenance, and surveillance of standard DoD data systems.

(f) *Item Entry Control.* (1) Administer the DoD Item Entry Control Program.

(2) Provide DoD-wide counsel and leadership in the development of techniques and systems to prevent the entry of unnecessary items into the DoD supply system; foster industry cooperation; and coordinate and monitor the direction and progress of the program to insure expeditious and effective DoD-wide implementation.

(3) Manage and conduct the DLA portion of the DoD Item Entry Control Program.

(g) *Contract Administration Services.* Within CONUS and overseas, as directed, provide assigned contract administration services to the military departments and other DoD components, Federal civil agencies and, when authorized, to foreign governments and others. Among the more significant functions performed are the following:

(1) *Industrial Security.* Administer the DoD Industrial Security Program. Establish procedures, requirements, and practices to insure effective protection of classified information (including foreign classified information) in the hands of contractors located within the United States, including Alaska and Hawaii, its possessions, trust territories, and Puerto Rico, and such other areas as are specifically authorized by the Secretary of Defense.

(2) *Contract Administration.* Perform contract administration, including plant clearance, utilization, and disposal of contract inventories, administration of Government furnished property, financial analysis, review of contractor management systems, price and cost analysis (excluding examination of contractor's financial records), convenience termination settlements, small business and economic utilization, negotiation of contract changes pursuant to the changes clause, determination of allowability of cost, and such other functions as are delegated.

(3) *Production.* Conduct preaward surveys and surveillance of contractors' production effort and industrial resources, and arrange for packaging and transportation support.

(4) *Quality Assurance.* Evaluate contractors' quality and reliability programs for conformance with contractual provisions; perform product verification inspection and testing for acceptance or rejection of supplies and services in accordance with the quality and reliability provisions of the contracts.

(5) *Engineering Liaison.* Provide engineering liaison and assistance to system/project managers and purchasing offices.

(6) *Management Data.* Provide management data for procuring activities and inventory managers including contract shipments, fund status and contractual disbursements.

(h) *DoD/GSA Supply Relationships.* (1) Monitor supply support arrangements between DoD components and GSA concerning procurement, storage and distribution of materiel within the United States or overseas.

(2) Review and evaluate performance by GSA under approved arrangements and, in collaboration with the military departments, take steps to assure efficient use of GSA services.

(3) Recommend to the ASD(MRA&L) action on proposals to support Federal civil agencies with DLA-assigned materiel.

(4) Maintain and implement criteria for assignment of supply management responsibility between DLA and GSA in Federal supply groups, classes, and items designated for integrated management within DoD; recommend to the ASD(MRA&L) changes in criteria as required.

(i) *Industrial Plant Equipment.* (1) Administer the DoD Industrial Plant Equipment (IPE) Program to ensure the reutilization of available assets.

(2) Maintain and control a reserve of IPE to meet peacetime and mobilization needs; rebuild items in the reserve, as necessary.

(3) Review and evaluate the operation of the DoD IPE Program and recommend changes as required to improve the effectiveness of operations.

(j) *Automatic Data-Processing Resources.* Under the policy guidance of the Assistant Secretary of Defense (Comptroller) (ASD(C)):

(1) Administer the Defense program for reutilization/redistribution of excess Government-owned or leased

automatic data processing equipment (ADPE).

(2) Assume responsibilities for the development, implementation, and management of a Defense ADP Sharing Program.

(3) Act as the ASD(C) executive agent for management of the ADP/MIS.

(4) Expand the capabilities of the ADP Resource Management System (ARMS) to provide necessary management information and visibility of ADP resources within the Department of Defense.

(k) *Warehousing Gross Performance Measurement.* Administer the DoD warehousing gross performance measurement system.

(l) *Technical (RDT&E) Report Services.* (1) Receive, store, announce, retrieve, and provide secondary distribution of scientific and technical documents.

(2) Receive, store, retrieve, and disseminate information on current research and exploratory development work.

(m) *Centralized Referral System for Displaced DoD Employees.* (1) Serve as the operating agency for the nationwide centralized referral system for displaced DoD employees.

(2) Coordinate the DoD referral and placement responsibilities within Zone 3 (Chicago and St. Louis Civil Service Regions).

(n) *Automation of the Career Program for Civilian Procurement Personnel.* Administer the automated phases of the DoD Civilian Procurement Career Development Program.

(o) *Defense Automatic Addressing System.* Administer operation of the defense automatic addressing system for logistics management data.

(p) *Civil Preparedness Materiel Support.* Administer assigned logistics operations contingent to the National Civil Defense Program within the policies and programs established by the Director of the Defense Civil Preparedness Agency.

(q) *Materiel Management*—(1) *Item Management Classification.* (i) Under policies and criteria prescribed by the ASD(MRA&L) and in coordination with the military departments, establish and maintain procedures for the coding and classification of items to be placed or maintained under integrated management and for resolving item management coding and classification conflicts between the military departments and DLA.

(ii) Determine the method of management (e.g., central stocking vs. local purchase) of assigned items.

(2) *Requirements and Supply Control (Assigned Items).* (i) Compute requirements for DLA distribution system stockage and replenishment needed for support of authorized customers.

(ii) Obtain forecasts of special program requirements (SPR's) and mobilization materiel requirements. Review for suitability and, in the case of mobilization requirements, for conformance to DoD criteria.

(iii) Compute mobilization materiel requirements, initial military department support requirements (provisioning), and/or SPR's when and in the manner mutually agreed upon between DOA and the supported military department or other customer agency.

(iv) Utilize current and projected requirements in relation to available resources for the purpose of budgeting, procurement, positioning, maintenance, retention and disposal.

(v) Provide necessary information to military departments and other authorized customers on supply capabilities in support of mobilization and peacetime program requirements.

(3) *Procurement.* (i) Conduct or direct procurement of assigned or otherwise designated items and services to meet the needs of the military departments and other authorized customers.

(ii) Administer the procurement priorities and allocation authorities as authorized by the Under Secretary of Defense for Research and Engineering.

(4) *Quality Reliability Assurance.* Take appropriate action to assure the quality and reliability of materiel procured by DLA and/or stored and maintained in the DLA distribution system.

(5) *Industrial Mobilization Planning.* (i) Conduct industrial mobilization and industrial readiness planning in assigned area of responsibility.

(ii) Maintain and publish revisions to the DoD register of planned emergency producers.

(6) *Storage.* (i) For DLA-assigned items and, as assigned, military department-managed items, civil defense items, and items managed by other Federal agencies:

(A) Determine requirements for storage space.

(B) Arrange for use of storage space and related services and facilities of the DoD, other Federal agencies, and commercial storage facilities, as necessary.

(ii) Manage, control, and operate assigned depots and storage facilities.

(iii) Administer the DoD commercial warehouse service plan for general merchandise warehouses and refrigerated storage.

(7) *Inventory and Distribution.* (i) Establish and maintain inventory procedures and distribution control, incuding reporting systems, over items owned and managed by DLA.

(ii) Control the distribution, redistribution, or disposition of assigned serviceable and reparable items of supply controlled by DLA or controlled by, but excess to the needs of, the individual installations of the military departments and other authorized customers.

(iii) Provide for stock positioning of mobilization reserve stocks, consistent with contingency, emergency, and mobilization plans.

(iv) Establish procedures for direct CONUS support of field and operating forces, and outside CONUS when mutually agreed upon by DLA and the supported service.

(v) Account for control DLA-owned property in the hands of Government manufacturing plants.

(vi) Institute measures in coordination with the military departments for the use of available assets of interchangeable and substitutable DLA-managed items.

(8) *Research and Development, and Engineering Support.* (i) Recommend to the military departments, or to the Under Secretary of Defense for Research and Engineering, as appropriate, any new or changed research, development and engineering projects considered desirable, to:

(A) Improve materials, items, and methods within the commodity jurisdictions assigned; and

(B) Promote the elimination of undesirable duplication.

(ii) Arrange through the appropriate military department and the Under Secretary of Defense for Research and Engineering for support required by DLA in the performance of its mission.

(9) *Transportation.* Arrange for transportation of DLA-owned materiel for initial distribution of stocks from supplier to point of storage, from point of storage or supplier direct to consumer, and for redistribution between storage points.

(10) *Maintenance and Manufacture.* (i) Manage, control, and operate assigned maintenance and manufacturing facilities.

(ii) Develop programs, schedules, and technical guidance; and provide or arrange for the maintenance, manufacture, modification, conversion, rehabilitation, reconstitution, or assembly of DLA-owned materiel and items authorized for return to DLA from users for repair at facilities of the military departments, commercial contractors, or those assigned to DLA.

(iii) Develop technical maintenance standards for DLA-owned items, and items authorized for return from users, in coordination with the using military departments.

(iv) When requested by the using military departments and other DoD components, provide technical manuals for the operation and maintenance of items assigned to DLA.

(11) *Provisioning.* (i) Participate as a supporting inventory manager in the provisioning processes of the military departments.

(ii) Establish and maintain, in coordination with the military departments, definitive procedures for provisioning supply support of the military departments and uniform provisioning of procedural and technical documentation requirements for incorporation into DLA contracts requiring provisioning.

(12) *Technical Logistics Data and Information.* (i) Develop, administer, and maintain, as assigned, documentation governing the preparation of technical data.

(ii) Acquire, process, interchange, identify, store, and issue technical data and information adequate to support mission requirements.

(r) *Value Engineering.* (1) Initiate value engineering-type projects and studies to seek the lowest overall cost for DLA-managed/procured items, consistent with requirements for performance, reliability and maintainability.

(2) Coordinate findings with military departments, as applicable, to obtain agreement with respect to technical and engineering aspects.

(3) Make decisions with respect to value engineering changes for DLA-managed items, subject to the right of appeal to the Secretary of Defense by the military departments affected.

(s) *Standardization.* (1) Manage and conduct those portions of the Defense Standardization Program assigned to DLA.

(2) In coordination with the military departments, direct and conduct technical reviews to determine the standardization status, and develop military supply standards for all items of supply assigned to DLA. Make final standardization decisions on all items managed by DLA, subject to the right of appeal to the Secretary of Defense by the military departments affected.

(3) Determine, in coordination with the military departments, interchangeability and substitutability of items of supply managed by DLA.

(t) *Manpower Data.* Administer and manage a Defense Manpower Data Center for collection, processing, and reporting of manpower data in support of OSD, other DoD components, and other Government agencies as assigned.

(u) *Shelf-Life Item Management.* (1) Administer the DoD Shelf-Life Item Management Program.

(2) Review and evaluate the operation of the DoD Shelf-Life Item Management Program and recommend policy changes, as appropriate.

(3) Provide a DoD Shelf-Life Item Management Program Evaluation Report to the ASD(MRA&L) not less frequently than once each year.

(v) Such other functions as may be assigned by the ASD(MRA&L).

[43 FR 32759, July 28, 1978, as amended at 45 FR 46071, July 9, 1980]

§ 359.6 Authority.

The Director, DLA, is specifically delegated authority to:

(a) Meet the needs of the military departments and other authorized customers by conducting, directing, supervising or controlling all procurement activities with respect to property, supplies and services assigned to DLA for procurement in accordance with applicable laws, DoD regulations and the defense acquisition regulation (DAR). To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the secretarial level of a military department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(b) Have free and direct access to, and communication with, all elements of the DoD and other executive departments and agencies, as necessary.

(c) Prescribe procedures, standards, and practices for DoD, governing the execution of assigned responsibilities and functions.

(d) Obtain such reports, information, advice, and assistance from other DoD components, consistent with the policies and criteria of DoD directive 5000.19,[1] as may be necessary for the performance of assigned functions and responsibilities.

(e) Establish new DLA facilities or recommend to the ASD(MRA&L) the takeover or use of existing facilities of the military departments by DLA, as deemed necessay for improved effectiveness and economy.

(f) Provide membership on the Defense Acquisition Regulatory Council and participate with the Secretaries of the military departments in the development and promulgation of the DAR.

(g) Exercise the administrative authorities contained in § 359.9 of this part.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

§ 359.7 Relationships.

(a) In the performance of his functions, the Director, DLA, shall:

(1) Maintain appropriate liaison with other DoD components and other agencies of the executive branch for the exchange of information and programs in the field of assigned responsibilities.

(2) Maintain close working relationships with weapon systems managers of the military departments to ensure integration of effort and exchange of technical programs and reference data.

(3) Make use of established facilities and services in the DoD or other governmental agencies wherever practicable to achieve maximum efficiency and economy.

(b) The Joint Chiefs of Staff, the military departments, and other DoD components shall provide support and logistical planning information, within their respective fields of responsibility, to the Director, DLA, to carry out assigned responsibilities and functions of DLA.

(c) The relationship between commanders of unified commands and overseas elements of the DLA is defined in § 359.10.

§ 359.8 Administration.

(a) The Director shall be selected by the Secretary of Defense.

(b) When the Director and the Deputy Director are both military officers, they will normally be selected from different military departments.

(c) DLA will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The military departments will assign military personnel to DLA in accordance with approved authorizations and procedures for assignment to joint duty.

(e) Programming, budgeting, funding, auditing, accounting, pricing, and reporting activities of DLA will be in accordance with policy and procedures established by the Office of the Secretary of Defense. DLA will utilize appropriated funds to finance the operating costs of the Agency; a stock fund to finance all inventories procured for resale; and, when appropriate, an industrial fund for financing industrial-commercial type operations.

§ 359.9 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, DLA, or in the absence of the Director the person acting for him, is hereby delegated authority as required in the administration and operation of DLA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b) and 3101 pertaining to the employment, direction and general administration of DLA civilian personnel.

(b) Fix rates of pay for wage board employees exempted from civil service classification by 5 U.S.C. 5102(c)(7) on the basis of prevailing rates for comparable jobs in the locality where each installation is located.

(c) Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense for the performance of DLA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), the Federal Advisory Committee Act, and the Agreement between the Department of Defense (DoD) and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DLA to perform this function.

(e) Establish a DLA incentive awards board and pay cash awards to, and incur necessary expenses for the honorary recognition of civilian employees of the government whose suggestions, inventions, superior accomplishments or other personal efforts, including special acts or services, benefit or affect DLA or its subordinate activities in accordance with the provisions of 5

BEST COPY AVAILABLE

U.S.C. 4503 and civil service regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450, dated April 27, 1953, as amended; and DoD Directive 5210.7, "Department of Defense Civilian Applicant and Employee Security Program," September 2, 1966:

(1) Designate any position in DLA as a "sensitive" position;

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the national agency check, has not been completed; and

(3) Authorize the suspension, but not to terminate the services of an employee in the interest of national security in positions within DLA.

(g) Clear DLA personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of DoD Directive 5210.8, "Policy on Investigation and Clearance of DoD Personnel for Access to Classified Defense Information," February 15, 1962, and of Executive Order 11652, dated March 8, 1972, as amended.

(h) Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954 and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954 and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DLA employees.

(i) Authorize and approve overtime work for DLA civilian officers and employees in accordance with the provisions of the Federal Personnel Manual Supplement 990-1, § 550.111.

(j) Authorize and approve:

(1) Travel for DLA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, DoD Civilian Personnel;

(2) Temporary duty travel only for military personnel assigned or detailed to DLA in accordance with Joint Travel Regulations, Volume 1, Members of Uniformed Services; and

(3) Invitational travel to persons serving without compensation whose consultive, advisory or other highly specialized technical services are required in a capacity that is directly related to, or in connection with DLA activities, pursuant to the provisions of 5 U.S.C. 5703.

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DLA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(l) Develop, establish and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102), the Freedom of Information Act Program (5 U.S.C. 552) and the Privacy Act Program (5 U.S.C. 552a).

(m) Establish and use imprest funds for making small purchases of material and services other than personal for DLA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973, and the Joint Regulation of the General Services Administration/Treasury Department/General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

(n) Authorize the publication of advertisements, notices of proposals in newspapers, magazines or other public periodicals as required for the effective administration and operation of DLA (44 U.S.C. 3702).

(o) Establish and maintain appropriate Property Accounts for DLA and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for DLA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DLA, pursuant to subsections III.A. and V.B. of DoD Directive 5200.8, "Authority of Military Commanders Under the Internal Security Act of 1950 to Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command," August 20, 1954.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directive System," November 18, 1977.

(r) Enter into interservice support agreements in accordance with DoD Directive 4000.19, "Basic Policies and Principles for Interservice, Interdepartmental and Interagency Support," March 27, 1972.

(s) Enter into logistic supply and service agreements with Federal Departments and Agencies other than the DoD.

(t) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(u) Exercise the authority and responsibility of the ASD(MRA&L) as delegated to the Director, DLA, for the National Industrial Equipment Reserve established by the National Industrial Reserve Act of 1948, as amended (50 U.S.C. 451 et seq.).

NOTE: The Director, DLA, may re-delegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

This delegation of authorities is effective immediately.

§ 359.10 Relationship between commanders of unified commands and overseas elements of the Defense Logistics Agency.

When the Secretary of Defense assigns mission responsibilities to the Director, Defense Logistics Agency (DLA) for the performance of integrated management functions outside of CONUS, command relationships and interfaces pertinent to DLA elements assigned overseas will be in consonance with the following:

(a) The Director, DLA, will:

(1) Ensure that DLA-assigned missions are carried out and coordinated in a manner fully responsive to, and in accordance with, the requirements of all unified and component commands concerned.

(2) Coordinate matters of significant mutual command and management interest with the unified commander and/or the Joint Chiefs of Staff (JCS), as may be appropriate. Unresolved issues between the Director, DLA, and a commander of a unified command will be referred to the JCS for resolution or forwarding to the ASD(MRA&L) for final determination when a negotiated resolution cannot be achieved.

(3) Except as otherwise provided herein, exercise operational command over DLA-assigned elements.

(4) Develop and promulgate necessary plans, policies and procedures for the efficient operation of DLA overseas activities.

(5) Develop resource requirements for DLA overseas activities and, in coordination with the applicable unified commands, establish/disestablish DLA elements as dictated by mission requirements and objectives.

(6) Comply with physical security requirements promulgated by the commander of the unified command or component commander, as appropriate.

(7) Provide for the management and direction of DLA overseas activities including budgeting, inspection and audit functions, personnel support and internal administration.

(b) The commander of a unified command is authorized to, and as appropriate, will:

(1) Exercise directive authority in the field of logistics over DLA elements within his geographic area of responsibility to ensure effectiveness and economy in operations, and the prevention or elimination of unnecessary duplication of facilities and overlapping of functions. This authority is defined as that required to ensure the coordination, as necessary, of:

(i) Acquisition, storage, movement, distribution, maintenance, evacuation and disposition of materiel.

(ii) Movement and evacuation of personnel.

(iii) Acquisition or construction, maintenance, operation and disposition of facilities.

(iv) Acquisition or furnishing of services.

The commander will exercise such authority, after prior coordination locally with the pertinent DLA overseas activity, directly with the Director, DLA, or through the JCS, as appropriate.

(2) In the event of a major emergency which necessitates use of all available forces, assume temporary operational control of all DLA elements in his area of responsibility. The determination of the existence of such an emergency is the responsibility of the commander concerned who, on assuming temporary operational control of DLA elements, shall immediately advise the following of the nature and estimated duration of employment:

(i) The JCS.

(ii) The appropriate operational commander.

(iii) The Director, DLA.

(3) Exercise administrative direction over DLA elements in their area of responsibility in a manner consistent with, and comparable to that which he exercises over assigned forces and elements of other DoD components within his command. This will include, without being limited to, matters relating to status of forces agreements and other agreements with host nations, standards for dress and conduct, general theatre regulations applicable to all U.S. Forces, and war and emergency plans.

(4) Provide, in accordance with existing DoD policy for interservice support, guidance on support between DLA overseas elements and service components.

(5) Advise the Director, DLA, of any recommended changes to, or dissatisfactions with, the type, adequacy and responsiveness of logistic support provided by DLA to and within his command. Unresolved issues between the Director, DLA, and a commander of a unified command will be referred to the JCS for resolution or forwarding to the ASD(MRA&L) for final determination when a negotiated resolution cannot be achieved.

(c) Commanders of component commands will:

(1) Exercise such responsibilities and authorities pertinent to DLA elements as may be assigned or otherwise delegated to them by the commander of their unified command.

(2) Provide for the physical security and administrative and logistic support of DLA elements as agreed to by DLA and component commands concerned under host/tenant agreements.

PART 360—DEFENSE MAPPING AGENCY

Sec.

360.1 Reissuance and purpose.
360.2 Mission.
360.3 Organization and management.
360.4 Responsibilities and function.
360.5 Relationships.
360.6 Authority.
360.7 Administration.
360.8 Delegations of Authority.

AUTHORITY: 10 U.S.C. Chap. 4.

SOURCE: 51 FR 17481, May 13, 1986, unless otherwise noted.

§ 360.1 Reissuance and purpose.

Under the authority vested in the Secretary of Defense by Title 10 U.S. Code, this part reissues 32 CFR Part 360 to update the responsibilities, functions, relationships, and authorities of the Defense Mapping Agency (DMA).

§ 360.2 Mission.

DMA shall provide support to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense

Agencies (hereafter referred to collectively as "DoD Components") on matters concerning mapping, charting, and geodesy (MC&G).

§ 360.3 Organization and management.

DMA is established as a separate agency of the Department of Defense under the direction, authority, and control of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 360.4 Responsibilities and functions.

(a) The *Director, DMA*, shall:

(1) Organize, direct, and manage the DMA and all assigned resources.

(2) Serve as Program Manager and coordinator of all DoD MC&G resources and activities, to include reviewing the execution of all DoD plans, programs, and policies for MC&G activities not assigned to DMA

(3) Provide staff advice and assistance on MC&G matters to the OSD, the OJCS, the Military Departments, other DoD Components, and other Government agencies, as appropriate.

(4) Develop MC&G guidance for the Department of Defense; review Military Department program and fiscal documents related to MC&G matters; and recommend appropriate actions to the Secretary of Defense.

(5) In support of the OJCS, review the MC&G requirements and priorities of the DoD Components and other Government agencies, and develop a consolidated statement of MC&G requirements and priorities.

(6) Ensure responsive support to the MC&G requirements of the Military Departments and the Unified and Specified Commands.

(7) Establish policies and provide DoD participation in national and international MC&G activities, in coordination with the Assistant Secretary of Defense (International Security Affairs) and the Assistant Secretary of Defense (International Security Policy), and execute DoD responsibilities under interagency and international MC&G agreements.

(8) Establish and/or consolidate DoD MC&G data collection requirements and provide them to the ASD(C3I), who shall verify and set priorities for such requirements; and collect or task other DoD Components to collect and provide necessary data.

(9) Establish DoD MC&G Research, Development, Test, and Evaluation (RDT&E) requirements, in coordination with the ASD(C3I), and task other DoD Components or private contractors to accomplish such requirements.

(10) Carry out the statutory responsibilities assigned to the Department of Defense under Chapter 167 of 10 U.S.C. for providing nautical charts and marine navigation data for the use of all vessels of the United States and navigators generally, and the responsibilities assigned under Chapter 13 of 44 U.S.C. for the printing of notices to mariners and other publications.

(b) The *Secretaries of the Military Departments* and the *Commanders of Unified and Specified Commands* shall:

(1) Develop and submit to DMA their MC&G requirements and priorities.

(2) Provide support, within their respective fields of responsibilities, to the Director, DMA, as required to carry out the assigned mission of the Agency.

(3) Assess the responsiveness of the DMA to their operational needs.

(c) The *Joint Chiefs of Staff* (JCS) shall:

(1) Advise the Secretary of Defense on MC&G requirements and priorities.

(2) Provide guidance to the DMA and the Unified and Specified Commands that will serve as the basis for interrelationships btween these organizations.

(3) Obtain the advice and recommendations from the Director, DMA, on matters within the areas of responsibility assigned to the DMA.

§ 360.5 Relationships.

(a) In performing assigned functions, the Director, DMA, shall:

(1) Be responsible to the JCS for operational matters within their cognizance, as well as requirements associ-

ated with the Joint Planning process. For these purposes, the Chairman of the JCS is authorized to task and communicate with the DMA directly.

(2) Maintain appropriate liaison with other DoD Components and other agencies of the Executive Branch for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies whenever practicable to achieve maximum efficiency and economy.

(4) Ensure that appropriate staff elements of the OSD, the OJCS, the Military Departments, and other DoD Components are kept fully informed concerning DMA activities with which they have substantive concern.

(b) The Secretaries of the Military Departments and Heads of other DoD Components shall:

(1) Provide assistance within their respective fields of responsibility to the Director, DMA, in carrying out the responsibilities and functions assigned to the DMA.

(2) Coordinate with the Director, DMA, on all programs and activities that include or are related to MC&G.

§ 360.6 Authority.

The Director, DMA, is specifically delegated authority to:

(a) Task DoD Components directly to accomplish the MC&G RDT&E and data collection requirements established by DMA and verified by the ASD(C3I).

(b) Have free and direct access to, and direct communications with, all elements of the Department of Defense and other executive departments and agencies, as necessary to carry out DMA functions and responsibilities.

(c) Obtain such reports and information, consistent with the policies and criteria of DoD Directive 5000.19,[1] and advice and assistance from other DoD Components as necessary to carry out DMA functions and responsibilities.

(d) Establish facilities necessary to accomplish the DMA mission in the most efficient and economical manner.

(e) Exercise the administrative authorties contained in § 360.8.

§ 360.7 Administration.

(a) The Director, DMA, shall be a commissioned officer of suitable general or flag rank appointed by the Secretary of Defense from officers of the Armed Forces on active duty.

(b) The Deputy Director shall be selected by the ASD(C3I). When the Deputy Director is a military officer, selection shall be based on the recommendation of the JCS.

(c) DMA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary

(d) The Military Departments shall assign military personnel to DMA in accordance with approved authorizations and procedures for assignment to joint duty. The JCS shall review and provide recommendations on the DMA joint manpower program to the ASD(C3I), as appropriate, for those functions where DMA is responsive to the JCS.

§ 360.8 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DMA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DMA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DMA civilian personnel.

(b) Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DMA shall follow the wage

---

[1] Copies may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

BEST COPY AVAILABLE

schedule established by the DoD Wage Fixing Authority.

(c) Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense, for the performance of DMA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DMA to perform this function.

(e) Establish a DMA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DMA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and applicable Office of Personnel Management (OPM) regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2[2], "DoD Personnel Security Program," December 20, 1979; as appropriate:

(1) Designate any position in DMA as a "sensitive" position.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services of an employee in the interest of national security in positions within DMA.

(4) Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DMA. Any action to deny or revoke a security clearance will be taken in accordance with procedures prescribed in DoD 5200.2-R[3], "DoD Personnel Security Program," December 1979.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DMA employees.

(h) Authorize and approve overtime work for DMA civilian officers and employees in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

(i) Authorize and approve:

(1) Travel for DMA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

(2) Temporary duty travel for military personnel assigned or detailed to DMA in accordance with Joint Travel Regulations, Volume 1, "Members of Uniformed Services."

(3) Invitational travel to persons serving without compensation whose consultive, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with DMA activities, pursuant to the provisions of 5 U.S.C. 5703.

(j) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DMA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

---

[2] See footnote 1 to § 360.6(e).

[3] See footnote 1 to § 360.6(e).

(k) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for DMA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71[4], "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DMA consistent with 44 U.S.C. 3702.

(n) Establish and maintain appropriate property accounts for DMA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DMA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DMA, pursuant to DoD Directive 5200.8[5], "Security of Military Installations and Resources," July 29, 1980.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1[6], "Department of Defense Directives System," October 16, 1980.

(q) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies, as required for the effective performance of DMA functions and responsibilities.

(r) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(s) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DMA. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(t) Sell maps, charts, and related products to the public as governed by the provisions of OMB Circular A-25, "User Charges," and 10 U.S.C., Chapter 167, section 2794.

(u) Authorize the release of classified DoD MC&G products to foreign nationals within DoD disclosure policies.

(v) Lease property under the control of DMA, under terms that will promote the national defense or that will be in the public interest, pursuant to the provisions of 10 U.S.C., Chapter 159, section 2667.

(w) Execute section 8091 of Pub. L. 99-190 (The FY 1986 Department of Defense Appropriations Act), December 19, 1985, relating to international agreements.

The Director, DMA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

PART 361—DEFENSE INVESTIGATIVE SERVICE

Sec.
361.1 Purpose.
361.2 Definitions.
361.3 Mission.
361.4 Organization and management.
361.5 Responsibilities and functions.
361.6 Authority.

[4-6] See footnote 1 to § 360.6(e).

Sec.
361.7 Relationship.
361.8 Administration.
361.9 Delegation of authority.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 52228, Nov. 9, 1978, unless otherwise noted.

§ 361.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, U.S. Code, this part is issued to assign direction, authority, and control over the Defense Investigative Service (hereafter referred to as "DIS") to the General Counsel of the Department of Defense, and to prescribe the functions, authorities and relationships described below.

§ 361.2 Definitions.

(a) *DoD components* means the Office of the Secretary of Defense and its field activities, Organization of the Joint Chiefs of Staff, Military Departments, Unified and Specified Commands and Defense Agencies.

(b) *DoD contractor* means any individual, corporation or other commercial or nonprofit entity that has a present or had a past contract or agreement with a DoD component to supply or to dispose of goods or to supply services, and any employee or agent thereof.

(c) *Law enforcement investigations* are investigations of suspected criminal, fraud, conflict of interest, or other activities intended to detect violations of law or DoD directives, and to identify persons who are violaters so that they may be prosecuted or made subject to administrative sanctions.

(d) *Personnel security investigations* are investigations required for the purpose of making a determination as to eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations, of subversive affiliations, suitability information, or hostage situations conducted for the purpose of making personnel security determinations; and also include investigations of allegations that arise subsequent to adjudicative action that requires resolution to determine an individual's current eligibility for access to classified information, or assignment or retention in a sensitive position.

§ 361.3 Mission.

The DIS is a Federal law enforcement and personnel security investigative agency and shall:

(a) Provide a single, centrally directed personnel security investigative service to conduct personnel security investigations within the 50 States, District of Columbia, and the Commonwealth of Puerto Rico for DoD Components and, when authorized by the General Counsel of the Department of Defense (hereafter referred to as "the General Counsel"), for other U.S. Government departments and agencies. DIS will request the Military Departments to accomplish investigative requirements of the DIS in other geographic areas.

(b) Conduct within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, when authorized by the General Counsel, law enforcement investigations of activities involving DoD Components or DoD contractors. The military Department investigative agencies will continue to have responsibility for, and unless the Secretary of Defense directs otherwise, DIS will not have responsibility for, law enforcement investigations involving the personnel, property facilities, or contracts, both awarded and administered by a single Military Department, or law enforcement investigations involving instances in which a single Military Department is the victim.

(c) Conduct such other investigations as the General Counsel may direct.

(d) Interface with existing relationships between the Military Departments and civilian Federal investigative agencies and provide liaison with and support for law enforcement investigations involving DoD personnel, facilities, or contractors conducted by the Federal Bureau of Investigation or other Federal investigative agencies in those instances in which the Posse Comitatus Act, 18 U.S.C. 1385 limitations or DoD policy restrict participation by military personnel.

(e) Operate a consolidated central Personnel Security Investigation Control Center in accordance with the provisions of DoD Directive 5200.27.[1]

(f) Manage the Defense Central Index of Investigations.

§ 361.4 Organization and management.

(a) The DIS is a separate agency of the Department of Defense under the direction, authority and control of the General Counsel.

(b) The DIS shall consist of a Director, a headquarters establishment, and such subordinate units, field activities and facilities as are established by the Director within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, or as are assigned to the DIS by the Secretary of Defense.

§ 361.5 Responsibilities and functions.

The Director, DIS, shall:

(a) Organize, direct, and manage the DIS and all resources assigned to DIS to include:

(1) Conducting, managing and controlling DIS activities in accordance with applicable DoD directives and applicable law.

(2) Programing, budgeting, funding, accounting for, and reporting the activities of DIS in accordance with the policies and procedures established by the Secretary of Defense.

(3) Assuring that DIS investigators receive appropriate training and are qualified as Federal law enforcement officers and accredited as special agents of the Department of Defense.

(b) Conduct personnel security investigations within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico for the Department of Defense and, as authorized by the General Counsel, for other U.S. Government departments and agencies.

(c) Conduct law enforcement investigations within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, as authorized by the General Counsel.

(d) Conduct other investigations and related operations as directed by the General Counsel.

(e) Provide investigative assistance, upon request and within available resources, to other DoD components.

(f) Maintain liaison on matters of mutual interest with and, within limits of established policy, render appropriate assistance to investigative, law enforcement, and other U.S. and foreign government activities.

(g) Conduct surveys and prepare analyses, special studies, and estimates.

(h) Obtain from DoD components and other U.S. Government departments and agencies, for record and statistical purposes, information on actions taken and final disposition of matters investigated by DIS.

(i) Refer to the appropriate civilian and military investigative agency, in accordance with the provisions of the Delimitation Agreement, February 23, 1949, matters developed as a result of DIS investigations which have a significant intelligence or counterintelligence aspect.

(j) Report to the General Counsel, for referral to the investigative agency or the appropriate military department, matters of a criminal nature involving a single military department.

(k) Establish standards and procedures for certification and accreditation of civilian and military personnel assigned to DIS investigative duties.

(l) Review criminal justice records of civilian police departments, local, State or Federal law enforcement agencies, and their record repositories as required.

(m) Provide personnel investigations support to the Director, National Security Agency.

§ 361.6 Authority.

The Director, DIS, is specifically delegated authority to:

(a) Exercise direction, authority, and control over DIS.

(b) Obtain such reports, information, advice and assistance, consistent with the policies and criteria of DoD

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120 Attention Code 301

Directive 5000.19 [1] as may be necessary for the performance of assigned mission, functions and responsibilities.

(c) Exercise the administrative authorities contained in § 361.9.

§ 361.7 Relationship.

(a) In the performance of assigned functions, the Director, DIS, shall:

(1) Maintain appropriate liaison with DoD components and other agencies for the exchange of information and programs in the field of assigned responsibilities.

(2) Maintain a close working relationship with military department investigative agencies, commanders, and security and military police program managers to insure a coordinated and integrated effort in matters of common concern.

(3) Enter into agreements with Heads of DoD components to provide for direct communication on investigative lead matters between the DIS investigative staff and the military department investigative agency staffs.

(4) Make use of existing DoD facilities and services whenever practical to achieve maximum efficiency.

(b) The General Counsel, for matters pertaining to DIS missions, shall:

(1) Serve as the principal point of contact within DoD and with other U.S. Government departments and agencies.

(2) Serve as the DoD member on interdepartmental boards, committees, and other groups.

(c) DoD components shall cooperate with and assist the Director, DIS, by providing access to information within their respective fields as required for DIS to carry out missions assigned by this part.

(d) The military department shall insure that overseas military investigative agencies provide prompt responses to DIS lead requests in order to expedite investigative matters within the DIS mission. The Director, DIS, will provide, as necessary, programing and workload projection information to the military departments for use in budgeting, and otherwise organizing the provisions of military department operational support to DIS.

§ 361.8 Administration.

(a) The Director, DIS, will be appointed by the Secretary of Defense.

(b) The DIS will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) Military personnel will be assigned to the DIS from the military departments in accordance with approved authorizations and procedures for assignment to joint duty.

§ 361.9 Delegation of authority.

Pursuant to the authority vested in the Secretary of Defense, the Director, DIS, or in the absence of the Director, a person acting for the Director is hereby delegated, subject to the direction, authority and control of the Secretary of Defense, and in accordance with DoD policies, directives, and instruction, and pertinent OSD regulations, authority as required in the administration and operation of DIS to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 302 and 3101, pertaining to the employment, direction, and general administration of DIS civilian personnel.

(b) Fix rates of pay for wage board employees exempted from chapter 51 of title 5, U.S.C. on the basis of rates established under the Coordinated Federal Wage System. In fixing those rates, the wage schedules established by DoD Wage Fixing Authority shall be followed.

(c) Establish advisory committees and employ part-time advisors for the performance of DIS functions pursuant to the provisions of 10 U.S.C. 173, and to hire experts and consultants pursuant to the provisions of 5 U.S.C. 3109(b), and the Agreement between the DoD and the Civil Service Commission on employment of experts and consultants, dated June 21, 1977.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903(b), and to designate in writing other officers and employees of DIS to perform this function.

---

[1] See footnote 1 to § 361.3(e).

(e) Establish a DIS Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishment, or other personal efforts, including special acts or services, benefit or affect DIS or its subordinate activities in accordance with the provisions of 5 U.S.C. 4503, and Civil Service Regulations.

(f) Perform the following functions in accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450; and 32 CFR Part 156:

(1) Designate any position in DIS as a "sensitive" position;

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the national security check, has not been completed; and

(3) Authorize the suspension, but not including termination, of the services of an employee in the interest of national security in positions within DIS.

(g) Clear DIS personnel and such other individuals as may be appropriate for access to classified defense material and information in accordance with the provisions of DoD Directive 5210.8,[1] and of Executive Order 11652.

(h) Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided under 26 U.S.C. 3122, and 42 U.S.C. 405(p) (1) and (2), with respect to DIS employees.

(i) Authorize and approve overtime work for DIS civilian officers and employees in accordance with the provisions of section 550.111 of the Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for DIS civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel only for military personnel assigned or detailed to DIS in accordance with Joint Travel Regulations, Volume I, for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to or in connection with DIS activities, pursuant to the provisions of 5 U.S.C. 5703, and Part A, Chapter 6, Volume II, Joint Travel Regulations.

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DIS for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing records management program, pursuant to the provisions of 44 U.S.C. 3102.

(m) Enter into and administer contracts, directly or through a DoD component, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment and services required to accomplish the mission of the DIS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the secretarial level of a military department, such authority will be exercised by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

(n) Establish and use imprest funds for making small purchases of material and services other than personal for DIS when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DoD Instruction 5100.71.[1]

(o) Authorize the publication of advertisements, notices, or proposals in public periodicals as required for the

---

[1] See footnote 1 to § 361.3.

[1] See footnote 1 to § 361.3.

BEST COPY AVAILABLE

effective administration and operation of DIS pursuant to 44 U.S.C. 3702.

(p)(1) Establish and maintain appropriate property accounts for DIS.

(2) Appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for DIS property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(q) Promulgate the necessary security regulations for the protection of property and activities under the jurisdiction of the Director, DIS, pursuant to subsections III.A. and V.B. of DoD Directive 5200.8.[1]

(r) Establish and maintain, for the functions assigned, appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1.

(s) Enter into support and service agreements with the military departments, other DoD agencies, or other Government agencies as required for the effective performance of responsibilities and functions assigned to DIS.

(t) Issue appropriate implementing documents and establish internal procedures to assure that the selection and acquisition of ADP resources are conducted within the policies contained in DoD Directive 4105.55, the Federal Property Management Regulations and Armed Services Procurement Regulations.

The Director, DIS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulations.

PART 362—DEFENSE COMMUNICATIONS AGENCY

Sec.

362.1 Purpose.
362.2 General.
362.3 Mission.
362.4 Organization.
362.5 Responsibilities.
362.6 Authority.
362.7 Administration.
362.8 Definitions.
362.9 Delegation of authority.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 52231, Nov. 9, 1978, unless otherwise noted.

§ 362.1 Purpose.

This part is issued to define the mission, responsibilities, authorities, and command relationships of the Defense Communications Agency (DCA) and its Director.

§ 362.2 General.

Pursuant to the authority vested in the Secretary of Defense and the provisions of Title 10, U.S. Code, section 125, DCA is established as an agency of the DoD and is placed under the direction, authority, and control of the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) (ASD(C^3 I)). Guidance with regard to military and communications doctrine, operational policies and procedures shall be furnished to the Director, DCA, by the JCS.

§ 362.3 Mission.

The mission of the DCA is to:

(a) Perform system engineering for the Defense Communications System (DCS) and insure that the DCS is planned, improved, operated, maintained, and managed effectively, efficiently, and economically to meet the long-haul, point-to-point, and switched network telecommunications requirements of the National Command Authorities (NCA), the DoD, and, as authorized and directed, other governmental agencies.

(b) Provide system engineering and technical support to the National Military Command System (NMCS) and the Minimum Essential Emergency Communications Network (MEECN). Provide other engineering and technical support to the Worldwide Military Command and Control System (WWMCCS), as assigned.

(c) Perform system architect functions for current and future Military Satellite Communications (MILSAT COM) systems.

(d) Provide analytical and automated data processing (ADP) support to the Joint Chiefs of Staff, the Secretary of Defense, and other DoD components, as directed and authorized.

(e) Procure leased communications circuits, services, facilities, and equipment for the DoD, where authorized, and for other Government agencies as directed by the Secretary of Defense. Initiate or process actions relating to regulatory and tariff matters, including rates for communications facilities leased by the DoD.

(f) Perform those functions and carry out those responsibilities, assigned by such other directives as may be issued by competent authority, that are not explicitly addressed in this part or that may be issued to add to, delete, or modify the contents of this part.

§ 362.4 Organization.

The DCA shall consist of a Director, a headquarters establishment, and such subordinate units, facilities, and activities as established by the Director or specifically assigned to the agency by the Secretary of Defense or by the Joint Chiefs of Staff acting by authority and direction of the Secretary of Defense.

§ 362.5 Responsibilities.

(a) The *Director, DCA*, shall:

(1) Command, organize, direct, and manage the DCA and its field organizations in accordance with assigned missions.

(2) Within assigned authorities, insure systems responsiveness to the requirements of the NCA, the DoD, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and all other authorized users, to include management of communications support for the national emergency preparedness functions.

(3) Function as a principal adviser to ASD(C^{3}I) on the DCS and as an adviser to the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and other DoD components on assigned mission responsibilities.

(4) Execute such tasks for the National Communications System (NCS) as may be assigned and directed by the Secretary of Defense in his capacity as Executive Agent, NCS.

(5) Provide appropriate planning documents to the ASD(C^{3}I), the Deputy Under Secretary of Defense for Policy and the Joint Chiefs of Staff.

(6) Develop or recommend, as appropriate, research, development, test, and evaluation (R.D.T. & E.) programs or projects required to accomplish the assigned mission. Manage DCA-funded R.D.T. & E. programs. Monitor the status of, coordinate, and provide guidance for R.D.T. & E. programs, for which DCA is assigned responsibility, that are included in the programs of other DoD components.

(7) Develop and promulgate procedures to insure the continuing supervision, review, and approval of acquisition, implementation, and engineering actions necessary to carry out approved plans and assigned missions.

(8) Perform financial management functions relating to DCA-funded programs. As requested by the ASD(C^{3}I), assist in the OSD review of programs and budgets supporting DCA missions. Maintain the Communications Services Industrial Fund.

(9) Develop technical standards, in coordination with the Military Departments and all other appropriate DoD Agencies for the DCS and other systems, as assigned and directed.

(10) Exercise through the DCA Operations Control Complex operational direction over the DCS either directly, over technical control facilities, switching centers, and other DCS operating elements, or through the appropriate Military Service operation and maintenance manager.

(11) Provide communications support to the OJCS and provide direct ADP support for: The Joint Chiefs of Staff and OSD analysis and simulation studies, operation of the command centers of the NMCS, and other appropriate tasks from OSD and the Joint Chiefs of Staff and their designated representatives.

(12) Provide computer software programs for the DCS and the NMCS, as required.

(13) Establish in coordination with the Military Departments, equipment levels for DCS switching centers, in-

cluding the cryptographic equipment that supports the DCS.

(14) Allocate, reallocate, and direct restoral of subsystems, trunks, circuits, channels and networks of the DCS for the authorized users of the system, based on approved requirements and in accordance with established priorities and procedures. The restoration of service requiring use of available resources not currently in operation or committed will be coordinated with the Joint Chiefs of Staff or the appropriate operation and maintenance managers of the Military Departments.

(15) Perform subsystem/project engineering as specifically assigned within mission responsibilities.

(16) Perform the centralized engineering and management function for all nontactical offbase DoD multiplex systems.

(17) Coordinate actions with other DoD components and governmental agencies having collateral or related functions in the field of its assigned responsibility.

(18) Coordinate communications security requirements other than communications security monitoring policy, which is not within the purview of this part, with the National Security Agency, the Military Departments, and the Joint Chiefs of Staff.

(19) Maintain active liaison for the exchange of information and advice with all DoD components and other governmental agencies.

(20) Make full use of established facilities of the DoD components and other departments of the Government, rather than unnecessarily duplicating such facilities.

(21) Establish requirements for and recommend assignment of responsibility for preparation of logistic engineering, and other support plans.

(22) Analyze and evaluate the performance of the DCS according to prescribed standards and practices, including the conduct of onsite performance evaluation visits. Inform users and operating elements regarding system status and make recommendations for improvements.

(23) Recommend the composition and identity of the DCS to the ASD(C^{3}I) in coordination with the Joint Chiefs of Staff.

(24) Coordinate in the management of resources allocated for the National Military Command System (NMCS) ADP support with supported users.

(25) Forward copies of requirements to the ASD(C^{3}I) and the Deputy Under Secretary of Defense for Policy. The latter official shall confirm and set priorities for such requirements.

(b) The *Deputy Under Secretary of Defense for Policy* shall provide guidance on matters of communications policy, requirements, and priorities.

(c) The *Chairman, Joint Chiefs of Staff* (for the Joint Chiefs of Staff) under the authority and direction of the Secretary of Defense shall:

(1) Provide guidance and, as appropriate, tasking to the Director, DCA, on military and communications doctrine and operational policies and procedures with regard to the development and operation of the Defense Communications System.

(2) Review and provide recommendations to the ASD(C^{3}I) or to the Director, DCA, as appropriate, on DCS plans, subsystem/project plans, ADP support plans, other joint communications plans and related programing documents, and for those functions where DCA is responsive to the Joint Chiefs of Staff, review and provide recommendations on the joint manpower program submitted by DCA.

(3) Provide advice to the ASD(C^{3}I) regarding the mission, functions, and responsibilities of the Director, DCA.

(4) Provide guidance and direction on matters pertaining to the planning, design, maintenance, testing and evaluation on systems software for the WWMCCS standard ADP systems.

(5) Develop and submit Joint Chiefs of Staff ADP requirements and priorities to the DCA.

(6) Provide policy and guidance concerning the utilization and implementation of MILSATCOM systems.

(7) Provide guidance concerning the relationships between the Commanders of the Unified and Specified Commands and DCA.

(8) Provide operational direction and guidance to the Director, Defense Communications Agency, on matters related to:

(i) Insuring that adequate and responsive communications support is provided the National Command Authorities, the JCS/OJCS, Unified and Specified Commanders, and the Military Departments, and that interfaces between DCS and tactical communications are maintained.

(ii) Providing systems engineering and technical support for the operation of the National Military Command System (NMCS) and the Minimum Essential Emergency Communications Network (MEECN).

(iii) Providing analytical and automated data processing (ADP) support to the JCS.

(iv) Providing centralized technical support to the JCS, Military Departments, Defense Agencies and Unified and Specified Commands for the WWMCCS standard ADP program.

(9) Provide advice to the Deputy Under Secretary of Defense for Policy regarding matters of communications policy, requirements, and priorities.

(d) *Commanders of Unified and Specified Commands* shall:

(1) Assess the responsiveness of the DCS to their operational needs. Conduct and participate in exercises and technical tests of the DCS and other communications systems.

(2) Develop agreements to delineate clearly the command/operational relationships with the DCA field organization, within the commander's area of responsibility, to insure mutual responsiveness and coordination of effort.

(e) The *Secretaries of the Military Departments*, in support of the DCA mission, shall:

(1) Provide, within the limitation of available resources, full support and assistance to the Director, DCA, in accomplishing his mission. The operating elements of the DCS will be responsive to the operational direction of the Director, DCA.

(2) Accomplish related functions in supports of systems, subsystems, programs, and projects for which DCA is responsible; such as planning, programing, budgeting, funding, providing detailed engineering, procuring, transporting, installing, testing, accepting, manning, activating, deploying, operating, maintaining, training, administering, conducting research and development, and providing logistic support.

(3) Obtain DCA concurrence on advance procurement plans and provide to DCA, for review and approval, technical specifications, statements of work, and, prior to execution, proposed contract changes impacting on configuration, cost, performance, or schedules of schedules of all systems for which DCA is responsible. Request DCA representation on source selection advisory councils and source selection evaluation boards for such systems, subsystems, and projects.

(4) Advise the Director, DCA, of shortages of funds, personnel, facilities, or materials that would prevent effective operation and maintenance of existing systems or prevent or delay scheduled implementation of new subsystems/projects.

(5) Submit long-haul, point-to-point telecommunications requirements to DCA for possible satisfaction within the DCS.

(f) *Other Defense Agencies* within their assigned areas of responsibility shall:

(1) Provide, within the limitation of available resources, full support and assistance to the Director, DCA, in accomplishing his mission.

(2) Submit their long-haul, point-to-point, telecommunications requirements to the DCA for possible satisfaction within the DCS.

§ 362.6 Authority.

The Director, DCA, or his designee, is specifically delegated authority to:

(a) Command the DCA and its field organizations.

(b) Establish DCA headquarters and field organizations and, within overall authorized manpower, allocate military and civilian spaces among such organizations in accordance with the policy of the Office of the Secretary of Defense.

(c) Have free and unrestricted communications with all elements of DoD, as well as with other organizations having national command, control, and communications responsibilities.

(d) Exercise management control and operational direction of the DCS and redelegate such authority over DCS facilities and resources, as appropriate.

(e) Establish the single control and reporting system for operational direction of the DCS and designate those DCS stations which shall function as reporting/reported-on stations within the system. DCA will coordinate information to be reported with the Military Departments to insure their requirements for DCS information are satisfied. Specific reporting requirements, as they are developed and prescribed, will be processed and approved consistent with the policies and criteria of DoD Directive 5000.19.[1]

(f) Exercise subsystem/project management or management control over the activities of the Military Departments, the Unified and Specified Commands, and all of the other DoD Agencies in those areas of endeavor that directly support the establishment and progressive improvement of the DCS and provide technical support of the NMCS.

(g) Prescribe, in coordination with appropriate DoD components, procedures, principles, standards, and practices to accomplish the assigned mission.

(h) Prescribe interface parameters and standards, monitor the installation status of new facilities, specify data and reports required for system traffic engineering and traffic management, and provide DCS traffic managment service with respect to subscriber terminal facilities accessing the DCS and as required to protect network integrity or to serve better the user's needs. In those cases where resource implications prevail, exercise of this authority requires mutual agreement with the Military Department or Defense Agency concerned, and the Assistant Secretary of Defense (Comptroller) when in excess of Military Department or Defense Agency resource authority or availability.

(i) Obtain, in coordination with the appropriate DoD components, such plans, reports, and information as are required to accomplish the DCA mission.

(j) Exercise the administrative authorities contained in § 362.8.

§ 362.7 Administration.

(a) The Director and Vice Director, DCA, will be commissioned officers of suitable general or flag rank appointed by the Secretary of Defense from officers of the Armed Forces on active duty. The Deputy Director, DCA, Military Satellite Communications System, will be appointed in accordance with DoD Directive 5105.44.[1]

(b) The appointment of other personnel to the DCA will be subject to the approval of the Director, DCA.

(c) The DCA will be authorized such personnel, facilities, funds, and other administrative support as deemed necessary by the Secretary of Defense.

(d) The Military Departments and other DoD components shall, within available resources, provide support as necessary to the DCA.

(e) Personnel, facilities, equipment, and other support required to maintain and operate specific elements of the DCS and other national communications facilities as assigned, for which a Military Department or any other DoD component has been assigned responsibility, shall be provided from resources available to the Military Department or DoD components.

[43 FR 52231, Nov. 9, 1978, as amended at 44 FR 36033, June 20, 1979]

§ 362.8 Definitions.

(a) *Defense Communications System (DCS).* (1) The DCS is a composite of DoD owned and leased telecommunications subsystems and networks comprised of facilities, personnel, and material under the management control and operational direction of the DCA. It provides the long-haul, point-to-point, and switched network telecommunications needed to satisfy the requirements of DoD and certain other Government agencies.

(2) The DCS includes fixed, transportable, and mobile facilities as appropriate. It consists of:

(i) Switching/relay facilities, to include associated software, of the general purpose (common user) networks such as AUTOVON, AUTODIN, and Automatic Secure Voice Communications (AUTOSEVOCOM).

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301

(ii) Transmission media/circuits, which provide user/subscriber connection into or interconnect the switching/relay facilities of the DCS general purpose (common user) networks, or which interconnect the switching/relay facilities and/or the user/subscriber terminals in special purpose and operational (dedicated) networks which are authorized use of the DCS.

(iii) The assets of the Defense Satellite Communications System, except any portions which are specifically excluded from the DCS.

(3) The DCS does not include:

(i) The mobile/transportable communications facilities organic to Army forces, Air Force forces, fleets, and Fleet Marine forces.

(ii) Ship/ship, ship/shore/ship, air/air, ground/air/ground, and other tactical telecommunications as defined in DoD Directive 4630.5.[1]

(iii) Post, camp, base, and station user/subscriber facilities.

(iv) The onsite telecommunications facilities associated with or integral to weapon systems and to missile launch complexes.

(4) The above definition of the DCS is amplified as follows:

(i) Generally, the interface point of post, camp, base, or station (fixed or mobile) facilities (non-DCS) with the DCS is established at the main distribution frame of the user/customer facility. In specific cases, if required, the interface point may be any other point agreed to between the DCA and the Services or as prescribed by the ASD(C^{3}I) or the Joint Chiefs of Staff.

(ii) Telecommunications for weapon destruct at missile and air defense launch and firing complexes and for command, countdown, control, and range safety are non-DCS, unless specifically included, however, the establishment of standards for interface with the DCS is a DCA responsibility.

(iii) Consoles and display devices integral to Unified and Specified Commands, their Component headquarters, and the Military Services' operations centers are non-DCS. The communications interfaces with these facilities, when operated with DCS communications, must be operationally and technically compatible with the DCS. Prescribing such interface standards is a DCA responsibility.

(iv) The DCS includes those telecommunications required to interconnect the National Command Authorities (NCA), the Joint Chiefs of Staff, and Commanders of Unified and Specified Commands with the general purpose networks.

(b) *Operating Elements of the DCS.* Organizations and units of DoD Components that operate and maintain DCS facilities.

(c) *DCA Field Organizations.* Those elements of the DCA that are under the command of the Director, DCA, but are organizationally separate from the DCA headquarters.

(d) *Worldwide Military Command and Control System (WWMCCS).* As defined in DoD Directive 5100.30.[1]

(e) *National Military Command System (NMCS).* As defined in DoD Directive 5100.30.[1]

(f) *NMCS Technical Support.* The engineering and ADP support efforts requisite to insure that NMCS functional requirements and performance objectives are met.

(g) *Military Satellite Communications (MILSATCOM) Systems.* As defined in DoD Directive 5105.44.[1]

(h) *The Minimum Essential Emergency Communications Network (MEECN).* For purposes of this part, MEECN is defined as a composite of designated WWMCCS communications assets that, netted together, provide assurance that decisions of the NCA can be delivered from the NCA to U.S. Forces during all periods of stress.

(i) *MEECN Technical Support.* The engineering and support effort requisite to insure that the functional requirements and performance objectives of the Joint Chiefs of Staff are met. It includes system analysis, development and supervision of technical plans and tests, technical interface recommendations, and recommendations for development efforts to meet system objectives as assigned.

---

[1] See footnote 1 to § 362.6(e).

(j) *Operational Direction.* The authoritative direction necessary to insure effective operation of the DCS. It includes authority to: Direct the operating elements of the DCS, assign tasks to those elements, and supervise the execution of those tasks; allocate and reallocate DCS facilities to accomplish the DCA mission; develop technical standards, practices, methods, and procedures for the performance and operation of the DCA.

(k) *Management Control.* The review, evaluation, coordination, and guidance of management actions necessary to fulfill the responsibilities outlined in this Directive.

(l) *Subsystem.* A functional component of a system which provides a specific capability.

(m) *Project.* An undertaking to analyze, plan, improve, modify, expand, or otherwise change a portion of a system. A project may pertain to elements of a subsystem, an entire subsystem, or a number of related subsystems or elements thereof.

(n) *Subsystem Project Management.* The continuing review, guidance, and approval, as appropriate, of actions taken in the development, processing, and implementation of approved subsystems/projects.

(o) *The DCS Plan.* A master plan for the evolutionary development and improvement of the DCS in fulfilling communications requirements of the DoD and other Government agencies as authorized and directed. The DCS Plan will cover the period from the budget year to 10 years in the future and will be in consonance with the Joint Strategic Planning System.

(p) *Subsystem Project Plan (S/PP).* A plan which supports the processing of major telecommunications requirements. Normally it provides justification for the acquisition of a new subsystem, or modification of an existing subsystem, portions thereof, or a combination of related subsystems.

(q) *Management Engineering Plan (MEP).* The control document to effect program implementation by all participating organizations. It is a compilation of documents which places in context the plans, schedules, costs, and scope of all work and resources to be provided by each participating organization. It identifies or specifies subsystem configuration, performance, and interface requirements; technical and operational standards and specifications; type of equipment to be used; work statements required; logistic support planning, integrated testing, and training; management approach to implementation; assignment of responsibility for conduct of all effort; a schedule for task accomplishment; and progress reports required.

(r) *Implementation/Installation Plan (I/IP).* The document which provides such detail as is necessary to serve as a guide for the implementation phase. It specifies the efforts required by participating organizations, establishes detailed schedules, and includes or identifies, as appropriate, supporting plans and documents containing technical and performance specifications, detailed work statements, applicable standards, advanced procurement plans, logistics, training, installation and test plans, and supporting facility requirements. The I/IP responds to and supports the MEP.

(s) *Systems Engineering.* The application of recognized engineering skills, techniques, and principles to the development of system concepts, associated technical design, and performance criteria used in planning, engineering, and implementing a system.

(t) *Subsystem Project Engineering.* That initial engineering necessary to support the development of the S/PP and similar plans and, subsequent to S/PP approval, the additional engineering refinements needed to define explicitly subsystem configuration, performance, reliability, maintainability, and other values or thresholds applicable to each subsystem component. This additional engineering, which may be included either in the MEP or issued separately, prescribes specific technical guidance for preparation of equipment specifications, control specifications, and other engineering detail to be included in the I/IP.

(u) *Detailed Engineering.* That engineering necessary to prepare complete equipment and software technical design or performance specifications which provide a basis for procurement, design/development, and test and acceptance. It also includes that engineering performed to accomplish site surveys and to install and check out subsystem elements or components.

§ 362.9 Delegation of authority.

Pursuant to the authority vested in the Secretary of Defense, the Director, Defense Communications Agency (DCA), or, in the absence of the Director, the person acting for him is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense and in accordance with Department of Defense (DoD) policies, directives, and instructions and pertinent Office of the Secretary of Defense regulations, authority as required in the administration and operation of DCA to:

(a) Exercise the powers vested in the Secretary of Defense by sections 301, 302(b), and 3101 pertaining to the employment, direction and general administration of DCA civilian personnel.

(b) Fix rates of pay for Wage Board employees exempted from the Classification Act by section 5102(c)(7) of Title 5 of the U.S.C. on the basis of rates established under the Coordinated Federal Wage System. DCA, in fixing such rates, shall follow the wage schedules established by the DoD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense for the performance of DCA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), the Federal Advisory Committee Act (Pub. L. 92-463, October 6, 1972), and the agreement between the DoD and the Civil Service Commission on employment of experts and consultants, dated July 22, 1959.

(d) Administer oaths of office incident to entrance into the executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of the Act of June 26, 1943, as amended (5 U.S.C. 2903(b)) and designate in writing, as may be necessary, officers and employees of DCA to perform this function.

(e) Establish a DCA Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DCA or its subordinate activities in accordance with DoD Directive 5120.15.[1] (Act of September 1, 1954, as amended (5 U.S.C. 4503) and Civil Service regulations.)

(f) In accordance with the provisions of the Act of August 26, 1950, as amended (5 U.S.C. 7532); Executive Order 10450, dated April 27, 1953, as amended; and DoD Directive 5210.7:[1]

(1) Designate any position in DCA as a "sensitive" position.

(2) Authorize, in case of emergency, the appointment of a person to a sensitive position in the agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within DCA.

(g) Clear DCA personnel and such other individuals as may be appropriate for access to classified material and information in accordance with the provisions of DoD Directive 5210.8,[1] and of Executive Order 11652, dated March 8, 1972, as implemented by National Security Council Directive, dated May 17, 1972, and the provisions of DoD Directive 5200.1.[1]

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954 (26 U.S.C. 3122) and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)), with respect to DCA employees.

(i) Authorize and approve overtime work for DCA civilian officers and employees in accordance with the provisions of Section 550.111 of the Civil Service regulations.

---

[1] See footnote 1 to § 362.6(e).

(j) Authorize and approve:

(1) Travel for DCA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel, dated July 1, 1965, as amended.

(2) Temporary duty travel only for military personnel assigned or detailed to DCA in accordance with Joint Travel Regulations, Volume 1, for Members of the Uniformed Services, dated November 1969, as amended.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to or in connection with DCA activities, pursuant to the provisions of section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 5703).

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DCA for expenses incident to attendance at meetings of technical scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense or a designee is required by law (37 U.S.C 412). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C 3102), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552(a)).

(m) Establish and use Imprest Funds for making small purchases of material and services other than personal for the DCA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71 and the Joint Regulation of the General Services Administration—Treasury Department—General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

(n) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals, as required, for the effective administration and operation of the DCA (44 U.S.C. 3702).

(o) Establish and maintain appropriate Property Accounts for the DCA. Appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for the DCA property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DCA, pursuant to subsections III.A. and V.B. of DoD Directive 5200.8.[1]

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1.

(r) Enter into support and service agreements with the Military Departments, other DoD agencies, or other Government agencies, as required, for the effective performance of responsibilities and functions assigned to the DCA.

(s) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(t) Enter into and administer contracts, directly or through a Military Department or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DCA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(u) Enter into contracts for leasing communications facilities for periods not to exceed 10 years as prescribed in DoD Directive 5100.32.[1]

---

[1] See footnote 1 to § 362.6(e).

The Director, DCA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

PART 363—DEFENSE SECURITY ASSISTANCE AGENCY

Sec.
363.1 Purpose.
363.2 Mission.
363.3 Organization and management.
363.4 Responsibilities and functions.
363.5 Authority.
363.6 Relationships.
363.7 Administration.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 43 FR 57875, Dec. 11, 1978, unless otherwise noted.

§ 363.1 Purpose.

Pursuant to authority vested in the Secretary of Defense under the provisions of title 10, United States Code, this part establishes the Defense Security Assistance Agency (hereafter referred to as "DSAA") and defines responsibilities, functions, authorities and relationships of DSAA as outlined below.

§ 363.2 Mission.

DSAA shall direct, administer, and supervise the execution of security assistance programs. "Security assistance" as used in this part, refers to the responsibilities of the Secretary of Defense under the Foreign Assistance Act of 1961, as amended, the Arms Export Control Act, as amended, related statutory authorities and Executive Orders and Directives relating to the administration of Military Assistance, International Military Education and Training, credit financing and Foreign Military Sales, DoD Directives 5132.3, 5100.27, and 5105.20.[2]

§ 363.3 Organization and management.

(a) DSAA is established as a separate agency of the Department of Defense under the direction, authority and control of the Assistant Secretary of Defense (International Security Affairs) (hereinafter referred to as "ASD(ISA)").

(b) DSAA shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(c) The Director, DSAA, may also serve as Deputy Assistant Secretary of Defense (Security Assistance) in the Office of the ASD(ISA).

§ 363.4 Responsibilities and functions.

(a) The *Director, DSAA*, shall:

(1) Organize, direct and manage the DSAA and all resources assigned to the DSAA.

(2) Direct, administer, and supervise, within the policies established by the ASD(ISA), Security Assistance planning and programs. The administration of sales programs may be delegated in whole or in part to the Military Departments, but such administration will be under the direction and supervision of the DSAA.

(3) Supervise formulation of detailed Security Assistance programs in accordance with approved guidance and policies.

(4) Coordinate the formulation and execution of Security Assistance programs with other governmental agencies under the guidance of the ASD(ISA).

(5) Review evaluations of Security Assistance program administration, including responsibility with respect to GAO and other audits.

(6) Conduct international logistics and sales negotiations with foreign countries, as directed by the ASD(ISA) and in coordination with the Under Secretary of Defense for Research and Engineering and the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), as appropriate.

(7) Serve as DoD focal point for liaison with U.S. industry with respect to Security Assistance activities.

(8) Manage the credit financing program, including the conclusion of

---

[1] See footnote 1 to § 362.6(e).

[2] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

credit agreements and the issuance of guaranties.

(9) Develop and promulgate Security Assistance procedures (MASM) 5105.38-M.[1]

(10) Supervise and perform, as appropriate, accounting and reporting functions for Security Assistance programs.

(11) Develop and operate the data processing system and maintain the worldwide data base required by all levels of management for the Security Assistance program.

(12) Maintain liaison with Congress on Security Assistance legislation and related matters and provide support to the ASD(ISA) for the presentation of the annual Security Assistance program before the Congress.

(13) Provide data support for the annual Security Assistance budget for inclusion in the President's budget.

(14) Keep the Joint Chiefs of Staff and the Commanders of the Unified Commands fully informed of Security Assistance matters.

(15) Direct and supervise organization, functions, and staffing of DoD elements in foreign countries responsible for managing Security Assistance programs.

(16) Perform such other functions as assigned by the ASD(ISA).

(b) The *ASD(ISA)* shall:

(1) Establish DoD Security Assistance policies.

(2) Coordinate the activities of DoD components related to Security Assistance affairs.

(3) Serve as the principal DoD point of contact and spokesman regarding Security Assistance policy, representing the DoD with other governmental agencies with respect to such matters.

(c) The basic responsibilities and functions of other DoD components relating to Security Assistance remain as assigned in DoD directive 5132.3.[2]

§ 363.5 Authority.

The Director, DSAA, is specifically delegated authority to:

(a) Have free and unrestricted access to, and direct communication with, all elements of the Department of Defense and other executive departments and agencies as necessary. All ASD(ISA) and DSAA Security Assistance directives and communications to the Unified and Specified Commands, the Military Departments, and the Military Assistance Advisory Groups, which have military operational implications, shall be coordinated with the Joint Chiefs of Staff. Conversely, all Joint Chiefs of Staff directives and communications to the Unified and Specified Commands or the Military Departments, which pertain to Security Assistance affairs, shall be coordinated with the ASD(ISA).

(b) Obtain such information, consistent with the policies and criteria of DoD Directive 5000.19,[2] advice, and assistance from other DoD components as may be necessary for the performance of assigned functions and responsibilities.

(c) Exercise the redelegation of authority previously established.

§ 363.6 Relationships.

(a) In the performance of his functions, the Director, DSAA shall:

(1) Maintain appropriate liaison with other DoD components for the exchange of information on programs in the field of assigned responsibilities.

(2) Make use of established facilities and services in the DoD or other governmental agencies wherever practicable to achieve maximum efficiency and economy.

(3) Conduct activities involving financial management, fiscal matters, accounting, budgeting, statistical reporting, and the international balance of payments, in accordance with policies and procedures established by the Assistant Secretary of Defense (Comptroller).

(b) The Military Department and other DoD components shall provide support, within their respective fields of responsibility to the Director, DSAA, to assist in carrying out assigned responsibilities and functions of DSAA.

---

[1] Copies may be obtained, if needed, from the Defense Security Assistance Agency (Comptroller), Room 4B715, Pentagon, Washington, D.C. 20301. Telephone: 202-697-2293.

[2] See footnote 1 to § 363.2.

§ 363.7 Administration.

(a) The Director, DSAA, shall be appointed by the Secretary of Defense.

(b) The appointment of other personnel to the Agency will be subject to the approval of the Director, DSAA, and the ASD(ISA).

(c) DSAA will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments will assign military personnel to DSAA in accordance with approved authorizations and procedures for assignment to joint duty.

PART 364—ASSISTANT TO THE SECRETARY OF DEFENSE (ATOMIC ENERGY)

Sec.

364.1 Purpose.
364.2 Responsibilities and functions.
364.3 Relationships.
364.4 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 44 FR 4469, Jan. 22, 1978, unless otherwise noted.

§ 364.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, United States Code, the position of Assistant to the Secretary of Defense (Atomic Energy) (hereinafter "the ATSD(AE)"), is hereby established with responsibilities, functions and authorities as prescribed herein. The Chairman of the Military Liaison Committee to the Department of Energy will serve as the ATSD(AE) without additional compensation.

§ 364.2 Responsibilities and functions.

The ATSD(AE), as the principal staff assistant for Department of Defense atomic energy matters, shall:

(a) Develop policies, provide advice, make recommendations, and issue guidance on Defense atomic energy plans and programs.

(b) Develop systems and standards for the administration and management of approved atomic energy plans and programs.

(c) Review and evaluate programs for carrying out approved policies and standards.

(d) Promote coordination, cooperation, and mutual understanding on atomic energy policies, plans, and programs within the Department of Defense, and between the DoD and other Federal agencies.

(e) Participate in those DoD planning, programming and budgeting activities which relate to atomic energy matters.

(f) Develop policies and procedures for the transmission of information to the Senate and House Armed Services Committees, as required by the Atomic Energy Act of 1954, as amended, and coordinate such information with other officials and agencies as appropriate.

(g) Serve on boards, committees, and other groups concerned with atomic energy. Also, represent the Secretary of Defense on atomic energy matters outside the Department of Defense.

(h) Perform such other functions as the Secretary of Defense may assign.

§ 364.3 Relationships.

(a) The ATSD(AE) shall serve under the direction, control, and authority of the Under Secretary of Defense for Research and Engineering.

(b) In the performance of assigned functions, the ATSD(AE) shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(3) Communicate with other Government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(c) The Military Liaison Committee shall advise the ATSD(AE) on such atomic energy matters as the latter deems appropriate and necessary.

(d) All DoD organizations shall coordinate all matters concerning the functions cited in section B with the ATSD(AE).

§ 364.4 Authorities.

The ATSD(AE) is hereby delegated authority to:

(a) Issue DoD Instructions and one-time directive-type memoranda, which carry out policies approved by the Secretary of Defense, in his assigned fields of responsibility. Instructions to the Military Departments will be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as he deems necessary.

(c) Communicate directly with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and the Directors of Defense Agencies. Communications of the ATSD(AE) to the Commanders of Unified and Specified Commands shall be coordinated with the Joint Chiefs of Staff.

PART 365—OFFICE OF ECONOMIC ADJUSTMENT

Sec.
365.1 Purpose.
365.2 Mission.
365.3 Organization and management.
365.4 Responsibilities and functions.
365.5 Relationships.
365.6 Authority.
365.7 Administration.
365.8 Delegation of authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

SOURCE: 44 FR 4670, Jan. 23, 1979, unless otherwise noted.

§ 365.1 Purpose.

(a) Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, this Part establishes the Office of Economic Adjustment (hereafter referred to as the "OEA") with responsibilities, functions, authorities, and relationships as stated below.

(b) "Economic Adjustment" as used in this Part refers to responsibilities of the Secretary of Defense under Executive Order 12049, "Defense Economic Adjustment Programs," March 27, 1978, and related responsibilities stated in DoD Directive 5410.12,[1] "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973.

§ 365.2 Mission.

The OEA shall:

(a) Plan, direct, coordinate, and manage economic adjustment programs to alleviate serious social and economic impacts that may result from major changes in DoD activities.

(b) In cooperation with DoD Components, identify proposed changes that could result in adverse local impacts, and encourage local officials to initiate early economic adjustment planning on a contingency basis.

(c) Upon request, and in coordination with appropriate local, State and Federal agencies, assist community officials to develop and implement feasible adjustment plans that will alleviate the impact of DoD actions.

(d) Support the Secretary of Defense as chairperson of the Economic Adjustment Committee (EAC), Executive Order 12049, and serve as the permanent staff for the community assistance activities of the EAC. In this capacity, arrange meetings, conduct studies, develop recommendations, prepare reports, and initiate other appropriate staff actions.

§ 365.3 Organization and management.

(a) The OEA is established as a field activity of the Office of the Secretary of Defense, under the authority, direction and control of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (hereafter referred to as the "ASD(MRA&L))". It shall consist of a Director and subordinate organizational elements established by the Director within re-

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa 19120, Attention Code 301.

BEST COPY AVAILABLE

sources authorized by the Secretary of Defense.

(b) The Director, OEA, is also designated as the Assistant to the ASD(MRA&L) for Economic Adjustment, and as Executive Director of the Economic Adjustment Committee.

§ 365.4 Responsibilities and functions.

(a) The Director, OEA, shall:

(1) Serve as the principal staff adviser to the ASD(MRA&L) on economic adjustment program matters.

(2) Organize, direct, and manage the OEA and all resources assigned to the OEA.

(3) Design, establish, and manage a Defense Economic Adjustment Program to achieve the objectives and implement the provisions of Executive Order 12049 and DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973.

(4) Monitor program change activities of DoD Components and, as required, assist in the evaluation of possible impacts and the identification of adjustment actions that could alleviate such impacts.

(5) Develop and recommend strategies and action plans to lessen serious local impacts of DoD realinements, e.g., base closures, conversion of inhouse activities to contract, major personnel reductions, and procurement cutbacks.

(6) Provide information and advice regarding the Economic Adjustment Program and the resources available to meet community economic adjustment needs.

(7) Plan, organize, coordinate, and administer economic adjustment assistance projects for communities, areas, and States adversely affected by DoD realinement actions.

(8) Assist local communities, areas, or States in expanding public service facilities to meet requirements generated by major expansions or the establishment of new DoD installations.

(9) Provide technical advice and assistance to Defense-dependent communities in efforts to diversify their economic base, reduce their vulnerability to change, and minimize the possible impact of future cutbacks.

(10) Evaluate DoD Economic Adjustment Program effectiveness.

(11) Develop, propose, and implement program improvements.

(12) Perform such other economic adjustment functions as may be assigned by the ASD(MRA&L).

(b) The ASD(MRA&L) shall:

(1) Recommend to the Secretary of Defense policies for the administration of economic adjustment programs.

(2) Provide policy guidance and management direction to the Director, OEA.

§ 365.5 Relationships.

(a) In the performance of assigned functions, the Director, OEA, shall:

(1) Establish and maintain effective liaison with DoD Components (and, after appropriate notification, with subordinate commands and installations, as required) for the timely exchange of information, and the coordination of realinements and economic adjustment plans and actions.

(2) Establish and maintain effective liaison with Federal domestic agency members of the EAC at headquarters and regional levels for timely exchange of information and the development, coordination, and support of economic adjustment assistance plans and actions.

(3) Use established facilities and services in the DoD and other governmental agencies whenever practical to achieve maximum efficiency and economy.

(b) Heads of DoD Components shall provide timely information and technical support to the Director, OEA, on matters within their respective fields of responsibilities and as may be necessary to carry out effectively the assigned responsibilities and functions of OEA.

§ 365.6 Authority.

The Director, OEA, is specifically authorized to:

(a) Obtain such information, advice, and assistance from other DoD Components as considered necessary, consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976.

(b) Communicate directly with appropriate personnel in the Military Departments and other DoD Components on matters related to OEA responsibilities and functions.

(c) Exercise the administrative authorities contained in § 365.8 of this part.

§ 365.7 Administration.

(a) The Director, OEA, shall be designated by the ASD(MRA&L).

(b) The OEA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense considers necessary.

(c) The Secretaries of Military Departments shall assign military personnel to the OEA within approved authorizations, and in accordance with established procedures for assignment to joint duty.

(d) Administrative support required for the OEA will be provided, through support and service agreements, by other DoD Components.

§ 365.8 Delegation of authorities.

Pursuant to the authority vested in the Secretary of Defense, and subject to his/her direction, authority and control, and in accordance with DoD policies, directives and instructions, the Director, OEA, or, in the absence of the Director, the person acting for him/her, is hereby delegated authority, as required in the administration and operation of OEA, to:

(a) Perform the following functions in accordance with the provisions of 5 U.S.C. 7532 (1976); Executive Order 10450, as amended, 3 CFR Part 936 (1949-1953 Compilation), reprinted at 5 U.S.C. 7311 (1976); and the DoD Directive 5210.7, "Department of Defense Civilian Applicant and Employee Security Program," September 2, 1966:

(1) Designate any position in OEA as a "sensitive" position;

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in OEA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Security Check, has not been completed; and

(3) Authorize the suspension, but not including termination of the services of an employee in the interest of national security in positions within OEA.

(b) Authorize and approve overtime work for OEA civilian employees in accordance with the provisions of the Federal Personnel Manual Supplement 990-1, § 550.111 (5 CFR 550.111 (1978)).

(c) Develop, establish and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C.A. 3102 (Supp. 1978).

(d) Authorize the publication of advertisements, notices, or proposals in public periodicals, as required for the effective administration of OEA pursuant to 44 U.S.C. 3702 (1970).

(e) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5205.1, "Department of Defense Directives System," November 18, 1977.

(f) In coordination with the DASD (Administration), enter into support and services agreements with the Military Departments, other DoD Components or other Government agencies, as required for the effective and efficient performance of responsibilities and functions assigned to OEA.

(g) Enter into and administer contracts through the DASD (Administration) or with his/her approval, directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment and services required to accomplish the mission of OEA. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

BEST COPY AVAILABLE

The Director, OEA, may redelegate these authorities, as appropriate and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

PART 366—DIRECTOR, PROGRAM ANALYSIS AND EVALUATION

Sec.

366.1 Purpose.
366.2 Definition.
366.3 Responsibilities.
366.4 Functions.
366.5 Relationships.
366.6 Authorities.

AUTHORITY: 10 U.S.C. 125.

SOURCE: 48 FR 17072, Apr. 21, 1983, unless otherwise noted.

§ 366.1 Purpose.

This part is reissued and establishes, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 125, the position of Director, Program Analysis and Evaluation (DPA&E), with the responsibilities, functions, and authorities as prescribed herein.

§ 366.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

§ 366.3 Responsibilities.

The Director, Program Analysis and Evaluation, as the principal staff assistant to the Secretary of Defense for DoD program analysis and evaluation, shall:

(a) Develop policies, provide advice, make recommendations, and participate in the preparation of planning, fiscal and materiel support guidance upon which DoD program projections are based.

(b) Perform analyses and evaluations of plans, programs, and budget submissions in relation to projected threats, estimated costs, resource constraints, and U.S. defense objectives and priorities.

(c) Identify issues and evaluate alternative programs.

(d) Initiate programs, actions, and taskings to ensure adherence to DoD policies and national security objectives; ensure that programs are designed to accommodate operational requirements and promote the readiness and efficiency of the U.S. Armed Forces.

(e) Review, analyze, and evaluate programs for carrying out approved policies and standards.

(f) Ensure that the costs of DoD programs are presented accurately and completely.

(g) Assess the effects of DoD spending on the U.S. economy, and evaluate alternative policies to ensure that the DoD program can be implemented efficiently.

(h) Provide leadership in developing and promoting improved methods for analyzing national security planning and the allocation of resources.

(i) Serve on boards, committees, and other groups pertaining to the DPA&E's functional areas, and represent the Secretary of Defense on PA&E matters outside the Department of Defense.

(j) Perform such other duties as the Secretary of Defense may assign.

§ 366.4 Functions.

In executing assigned responsibilities, the DPA&E shall:

(a) Carry out the responsibilities described in § 366.3 for the following functional areas:

(1) General purpose force structure, both active and reserve.

(2) Strategic and theater nuclear force structure.

(3) Mobility force structure and prepositioning plans.

(4) Force readiness and capabilities.

(5) Weapon systems and major items of materiel.

(6) Implications for manpower resources of specific force structure plans.

(7) Support systems.

(8) Contingency plans.

(9) Materiel support programs and war reserve stocks.

(10) Deployment plans and overseas basing requirements.

(11) Mobilization plans.

(12) Effects of the DoD program on the economy and the industrial base.

(13) Security assistance programs.

(14) Allied and foreign military requirements and capabilities.

(15) Nuclear warhead requirements.

(16) Such other areas as the Secretary of Defense may from time to time prescribe.

(b) Perform critical reviews of requirements, performance, and life-cycle costs of current and proposed weapon systems.

(c) Provide leadership and support to the Cost Analysis Improvement Group in accordance with DoD Directive 5000.4.

§ 366.5 Relationships.

(a) In the performance of his duties, the DPA&E shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the DPA&E on all matters related to the functions cited in § 366.4.

§ 366.6 Authorities.

The DPA&E is hereby delegated authority to:

(a) Issue instructions and one-time directive-type memoranda, consistent with DoD Directive 5025.1, that carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through their Secretaries or designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19, as necessary.

(c) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated with the Joint Chiefs of Staff.

(d) Establish arrangements for DoD participation in those nondefense governmental programs for which the DPA&E has been assigned primary cognizance.

(e) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Sec.

367.1 Purpose.
367.2 Responsibilities.
367.3 Functions.
367.4 Relationships.
367.5 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 44 FR 11227, Feb. 27, 1979, unless otherwise noted.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, section 136, as amended, one of the positions of Assistant Secretary of Defense is designated as the Assistant Secretary of Defense (Health Affairs) (hereinafter "the ASD(HA)"), with responsibilities, functions and authorities as prescribed herein.

§ 367.2 Responsibilities.

The ASD(HA) is the principal staff assistant for all Department of Defense (DoD) health matters and, as such, shall:

(a) Develop policies, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems, standards, and procedures for the administration and management of approved plans and programs.

(c) Initiate programs, actions, and tasking to ensure: (1) Adherence to DoD policies and National health objectives; and (2) that programs are designed to accommodate operational requirements.

(d) Review and evaluate programs for carrying out approved policies and standards.

(e) Participate in those planning, programing, and budgeting activities which relate to ASD(HA) responsibilities.

(f) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the DoD and other Federal agencies and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas. Also represent the Secretary of Defense on HA matters outside the Department of Defense.

(h) Establish requirements for DoD research and development programs in medical fields, and keep abreast of technical developments to provide for their orderly transition to operational status.

(i) Establish requirements and standards for medical facilities and material acquisition programs.

(j) Execute such other responsibilities as may be prescribed.

§ 367.3 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in section B for the following functional areas:

(1) Preventive medicine and health care delivery, including dental affairs.

(2) Drug abuse.

(3) Alcohol abuse.

(4) Procurement, professional development and retention of medical and dental personnel, and related health care specialists.

(b) Perform such other functions as may be assigned.

§ 367.4 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Report directly to the Secretary of Defense.

(2) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(4) Represent the Secretary of Defense, as an ex officio member, on the Board of Regents of the Uniformed Services University of the Health Sciences.

(5) Provide policy guidance to, and exercise direction, authority, and control over the Office of Civilian Health and Medical Program of the Uniformed Services consistent with 10 U.S.C. Chapter 55 "Medical and Dental Care" and DoD Directive 5105.46[1], "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974.

(6) Provide policy guidance to, and exercise direction, control and authority over the Office of the Tri-Service Medical Information System.

(b) All DoD organizations shall coordinate all matters concerning the functions cited in § 367.3 with the ASD(HA).

[44 FR 34944, June 18, 1979]

§ 367.5 Authorities.

(a) The ASD(HA) is hereby delegated authority to:

(1) Issue DoD Instructions and one-time directive-type memoranda, consistent with the provisions of DoD Directive 5025.1[1], Department of Defense Directives Systems," November 18, 1977, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments will be issued through the Secretaries of those Departments, or their designees. Instructions to Unified or Specified Commands will be issued through the Joint Chiefs of Staff.

(2) Obtain such reports, information, advice, and assistance, consistent with the policies, and criteria of DoD Directive 5000.19[1], "Policies for the Management and Control of Information Requirements," March 12, 1976.

(3) Communicate directly with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Directors of Defense Agencies and, through the Joint Chiefs of Staff, the Commanders of Unified and Specified Commands.

(4) Make determinations with respect to the uniform implementation of laws relating to separation from the Military Departments by reason of physical disability as prescribed in

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 301.

DoD Directive 1332.18[1], "Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability," September 9, 1968.

(5) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense responsibility to administer title 10, United States Code, Chapter 55.

PART 368—FUNCTIONS OF THE DEPARTMENT OF DEFENSE AND ITS MAJOR COMPONENTS

Sec.

368.1 Purpose.
368.2 Organizational relationships in the Department of Defense.
368.3 Functions of the Department of Defense.
368.4 Functions of the Joint Chiefs of Staff.
368.5 Functions of the military departments and the Military Services.
368.6 Functions of DoD Agencies.

AUTHORITY: 50 U.S.C. 401, 10 U.S.C. 125.

SOURCE: 45 FR 19547, Mar. 26, 1980, unless otherwise noted.

§ 368.1 Purpose.

(a) Under the authority of title 50 U.S.C. 401, section 2 of the National Security Act of 1947, as amended, Congress described the basic policy embodied in the Act as follows:

> In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff."

(b) To provide guidance in accordance with the policy declared by Congress, the Secretary of Defense, with the approval of the President, hereby promulgates the following statement of the functions of the Department of Defense and its major components.

§ 368.2 Organizational relationships in the Deparment of Defense.

(a) All functions in the Department of Defense and its component agencies are performed under the direction, authority, and control of the Secretary of Defense.

(b) The Department of Defense includes the Office of the Secretary of Defense, the Military Departments and the Military Services within those Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

(1) In providing immediate staff assistance and advice to the Secretary of Defense the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, though separately identified and organized, function in full coordination and cooperation in accordance with DoD Directive 5158.1,[1] "Organization of the Joint Chiefs of Staff and Relationships With the Office of the Secretary of Defense," January 26, 1980.

(i) The Office of the Secretary of Defense includes the offices of the Under Secretaries of Defense, Assistant Secretaries of Defense; the General Counsel of the Department of Defense; the Assistants to the Secretary of Defense; and such other staff offices as the Secretary of Defense establishes to assist him in carrying out his duties and responsibilities. The functions of the heads of these offices shall be as assigned by the Secretary of Defense in accordance with existing laws.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelpia, PA 19120, Attention: Code 301.

(ii) The Joint Chiefs of Staff, as a group, are directly responsible to the Secretary of Defense for the functions assigned to them. Each member of the Joint Chiefs of Staff, other than the Chairman, is responsible for keeping the Secretary of his Military Department fully informed on matters considered or acted upon by the Joint Chiefs of Staff.

(2) Each Military Department (the Department of the Navy to include naval aviation and the United States Marine Corps) shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense. The Secretary of a Military Department shall be responsible to the Secretary of Defense for the operation of such Department as well as its efficiency. Orders to the Military Departments shall be issued through the Secretaries of these Departments, or their designees, by the Secretary of Defense or under authority specifically delegated in writing by the Secretary of Defense or provided by law.

(3) Commanders of Unified and Specified Commands are responsible to the President and the Secretary of Defense for the accomplishment of the military missions assigned to them. The chain of command runs from the President to the Secretary of Defense and through the Joint Chiefs of Staff to the commanders of Unified and Specified Commands. Orders to such commanders shall be issued by the President or the Secretary of Defense, or by the Joint Chiefs of Staff by the authority and direction of the Secretary of Defense. These commanders shall have full operational command over the forces assigned to them and shall perform such functions as are prescribed by the Unified Command Plan and other directives issued by competent authority.

(c) The functions assigned hereafter may be transferred, reassigned, abolished, or consolidated by the Secretary of Defense in accordance with the procedures established and the authorities provided in the National Security Act of 1947, as amended (10 U.S.C. 125).

§ 368.3 Functions of the Department of Defense.

As prescribed by higher authority, the Department of Defense shall maintain and employ armed forces to:

(a) Support and defend the Constitution of the United States against all enemies, foreign and domestic.

(b) Ensure, by timely and effective military action, the security of the United States, its possessions, and areas vital to its interest.

(c) Uphold and advance the national policies and interests of the United States.

(d) Safeguard the internal security of the United States.

§ 368.4 Functions of the Joint Chiefs of Staff.

The Joint Chiefs of Staff, consisting of the Chairman; the Chief of Staff, U.S. Army; the Chief of Naval Operations; the Chief of Staff, U.S. Air Force; and the Commandant of the Marine Corps, and supported by the Organization of the Joint Chiefs of Staff, constitute the immediate military staff of the Secretary of Defense. The Joint Chiefs of Staff are the principal military advisers to the President, the National Security Council, and the Secretary of Defense. In performance of their functions of advising and assisting the Secretary of Defense, and subject to the authority and direction of the President and the Secretary of Defense, it shall be the duty of the Joint Chiefs of Staff to:

(a) Serve as advisers and as military staff in the chain of operational command with respect to Unified and Specified Commands, to provide a channel of communications from the President and Secretary of Defense to Unified and Specified Commands, and to coordinate all communications in matters of joint interest addressed to the commanders of the Unified or Specified Commands by other authority.

(b) Prepare strategic plans and provide for the strategic direction of the armed forces, including the direction of operations conducted by commanders of Unified and Specified Commands and the discharge of any other function of command for such commands directed by the Secretary of Defense.

(c) Prepare joint logistic plans and assign logistic responsibilities to the Military Services and Defense Logistics Agency in accordance with those plans; ascertain the logistic support available to execute the general war and contingency plans of the commanders of the Unified and Specified Commands; review and recommend to the Secretary of Defense appropriate logistic guidance for the Military Services which, if implemented, shall result in logistic readiness consistent with the approved strategic plans.

(d) Prepare integrated plans for military mobilization.

(e) Provide adequate, timely, and reliable joint intelligence for use within the Department of Defense.

(f) Review major personnel, materiel, and logistic requirements of the armed forces in relation to strategic and logistic plans.

(g) Review the plans and programs of commanders of Unified and Specified Commands to determine their adequacy, feasibility, and suitability for the performance of assigned missions.

(h) Provide military guidance for use by the Military Departments, the armed forces, and the defense agencies in the preparation of their respective detailed plans.

(i) Participate, as directed, in the preparation of combined plans for military action in conjunction with the armed forces of other nations.

(j) Recommend to the Secretary of Defense the establishment and force structure of Unified and Specified Commands in strategic areas.

(k) Determine the headquarters support, such as facilities, personnel, and communications, required by commanders of Unified and Specified Commands, and recommend the assignment to the Military Departments of the responsibilities for providing such support.

(l) Establish doctrines for unified operations and training, and for coordination of the military education of members of the armed forces.

(m) Recommend to the Secretary of Defense the assignment of primary responsibility for any function of the armed forces requiring such determination and the transfer, reassignment, abolition, or consolidation of such functions.

(n) Prepare and submit to the Secretary of Defense, for information and consideration in connection with the preparation of budgets, statements of military requirements based upon U.S. strategic considerations, current national security policy, and strategic war plans. These statements of requirements shall include tasks, priority of tasks, force requirements, and general strategic guidance for developing military installations and bases and for equipping and maintaining military forces.

(o) Advise and assist the Secretary of Defense in research and engineering matters by preparing: Statements of broad strategic guidance to be used in the preparation of an integrated DoD program; statements of overall military requirements; statements of the relative military importance of development activities to meet the needs of the Unified and Specified commanders; and recommendations for the assignment of specific new weapons to the armed forces.

(p) Prepare and submit to the Secretary of Defense for information and consideration general strategic guidance for the development of industrial mobilization programs.

(q) Prepare and submit to the Secretary of Defense military guidance for use in the development of military aid programs and other actions relating to foreign military forces, including recommendations for allied military force, materiel, and facilities requirements related to U.S. strategic objectives, current national security policy, strategic war plans, and the implementation of approved programs; and make recommendations to the Secre-

tary of Defense as necessary, to keep the Military Assistance program in consonance with agreed strategic concepts.

(r) Provide U.S. representation on the Military Staff Committee of the United States Mission to the United Nations, in accordance with the provisions of the Charter of the United Nations, and representation on other properly authorized military staffs, boards, councils, and missions.

(s) Perform such other duties as the President or the Secretary of Defense may prescribe.

§ 368.5 Functions of the Military Departments and the Military Services.

(a) The chain of command for purposes other than the operational direction of Unified and Specified Commands runs from the President to the Secretary of Defense to the Secretaries of the Military Departments.

(b) The Military Departments, under their respective Secretaries and in accordance with §§ 368.2 and 368.4, shall:

(1) Prepare forces and establish reserves of equipment and supplies for the effective prosecution of war, and plan for the expansion of peacetime components to meet the needs of war.

(2) Maintain mobile reserve forces in readiness, properly organized, trained, and equipped for employment in an emergency.

(3) Provide adequate, timely, and reliable departmental intelligence for use within the Department of Defense.

(4) Organize, train, and equip forces for assignment to Unified or Specified Commands.

(5) Recommend appropriate logistic guidance to the Secretary of Defense for their respective Military Departments that, if implemented, will result in logistic readiness consistent with approved strategic guidance; and verify the continuing adequacy of approved logistic guidance and the resources available to their respective Military Departments.

(6) Prepare and submit budgets to the Secretary of Defense for their respective Departments; justify budget requests before the Congress as approved by the Secretary of Defense; and administer the funds made available for maintaining, equipping, and training the forces of their respective Departments, including those assigned to Unified and Specified Commands. The budget submissions to the Secretary of Defense by the Military Departments shall be prepared, among other considerations, on the basis of the advice of commanders of forces assigned to Unified and Specified Commands. Such advice, in the case of component commanders of Unified Commands, will be in agreement with the plans and programs of the respective Unified Commanders.

(7) Conduct research; develop tactics, techniques, and organization; and develop and procure weapons, equipment, and supplies essential to fulfill the functions hereafter assigned.

(8) Develop, garrison, supply, equip, and maintain bases and other installations, including lines of communication, and provide administrative and logistic support for all forces and bases.

(9) Provide, as directed, such forces, military missions, and detachments for service in foreign countries as may be required to support the national interest of the United States.

(10) Assist in training and equipping the military forces of foreign nations.

(11) Assist each other in the accomplishment of their respective functions, including the provision of personnel, intelligence, training, facilities, equipment, supplies, and services.

(c) The forces developed and trained to perform the primary functions set forth hereafter shall be employed to support and supplement the other Military Services in carrying out their primary functions, where and whenever such participation shall result in increased effectiveness and shall contribute to the accomplishment of the overall military objectives. As for collateral functions, while the assignment of such functions may establish further justification for stated force requirements, such assignment shall not be used as the basis for establishing additional force requirements.

(1) *Functions of the Department of the Army.* (i) The Department of the Army is responsible for the preparation of land forces necessary for the effective prosecution of war except as

otherwise assigned and, in accordance with integrated mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(ii) The Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein.

(iii) The primary functions of the Army are to:

(A) Organize, train, and equip Army forces for the conduct of prompt and sustained combat operations on land; specifically, forces to defeat enemy land forces and to seize, occupy, and defend land area.

(B) Organize, train, and equip Army air defense units, including the provision of Army forces as required for the defense of the United States against air attack, in accordance with doctrines established by the Joint Chiefs of Staff.

(C) Organize, equip, and provide Army forces in coordination with the other Services, for joint amphibious and airborne operations, and to provide for the training of such forces, in accordance with doctrines established by the Joint Chiefs of Staff.

(*1*) Develop, in coordination with the other Services, doctrines, tactics, techniques, and equipment of interest to the Army for amphibious operations not provided for in § 368.5(c)(2)(iii)(B)(*3*) and § 368.5(c)(2)(iii)(D).

(*2*) Develop, in coordination with the other Military Services, the doctrines, procedures, and equipment employed by Army and Marine Forces in airborne operations. The Army shall have primary interest in the development of those airborne doctrines, procedures, and equipment that are of common interest to the Army and the Marine Corps.

(D) Provide an organization capable of furnishing adequate, timely, and reliable intelligence for the Army.

(E) Provide forces for the occupations of territories abroad, to include the initial establishment of military government pending the transfer of this responsibility to other authority.

(F) Formulate doctrines and procedures for the organizing, equipping, training, and employment of forces operating on land, except that the formulation of doctrines and procedures for the organization, equipping, training, and employment of Marine Corps' units for amphibious operations shall be a function of the Department of the Navy, coordinating as required by § 368.5(c)(2)(iii)(B)(*3*).

(G) Conduct the following activities:

(*1*) Functions relating to the management and operation of the Panama Canal as assigned by the Secretary or Deputy Secretary of Defense.

(*2*) The authorized civil works program, including projects for improvement of navigation, flood control, beach erosion control, and other water resource developments in the United States, its territories, and its possessions.

(*3*) Certain other civil activities prescribed by law.

(iv) The collateral functions of the Army are to train forces to interdict enemy sea and air power and communications through operations on or from land.

(2) *Functions of the Department of the Navy.* (i) The Department of the Navy is responsible for the preparation of Navy and Marine Corps forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated mobilization plans, for the expansion of the peacetime components of the Navy and Marine Corps to meet the needs of war.

(ii) Within the Department of the Navy, the Navy includes naval combat and service forces and such aviation as may be organic therein, and the Marine Corps includes not less than three combat divisions and three air wings and such other land combat, aviation, and other services as may be organic therein.

(iii) The primary functions of the Navy and the Marine Corps are to:

(A) Organize, train, and equip Navy and Marine Corps forces for the conduct of prompt and sustained combat operations at sea, including operations of sea-based aircraft and land-based naval air components, specifically, forces to seek out and destroy enemy naval forces and to suppress enemy sea commerce, to gain and maintain general naval supremacy, to control vital sea areas, to protect vital sea lines of communication, to establish and maintain local superiority (including air) in an area of naval operations, to seize and defend advanced naval bases, and to conduct such land and air operations as may be essential to the prosecution of a naval campaign.

(B) Maintain the Marine Corps, whose specific functions are to:

(*1*) Provide Fleet Marine forces of combined arms, together with supporting air components, for service with the Fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. These functions do not contemplate the creation of a second land Army.

(*2*) Provide detachments and organizations for service on armed vessels of the Navy, and security detachments for the protection of naval property at naval stations and bases.

(*3*) Develop, in coordination with the other Military Services, the doctrines, tactics, techniques, and equipment employed by landing forces in amphibious operations. The Marine Corps shall have primary interest in the development of those landing force doctrines, tactics, techniques, and equipment that are of common interest to the Army and the Marine Corps.

(*4*) Train and equip, as required, Marine Forces for airborne operations in coordination with the other Military Services and in accordance with doctrines established by the Joint Chiefs of Staff.

(*5*) Develop, in coordination with the other Military Services, doctrines, procedures, and equipment of interest to the Marine Corps for airborne operations not provided in § 368.5(c)(1)(iii)(C)(2).

(C) Organize and equip, in coordination with the other Military Services, and provide naval forces, including naval close air-support forces, for the conduct of joint amphibious operations, and be responsible for the amphibious training of all forces assigned to joint amphibious operations, in accordance with doctrines established by the Joint Chiefs of Staff.

(D) Develop, in coordination with the other Military Services, the doctrines, procedures, and equipment of naval forces for amphibious operations, and the doctrines and procedures for joint amphibious operations.

(E) Furnish adequate, timely, and reliable intelligence for the Navy and Marine Corps.

(F) Organize, train, and equip naval forces for naval reconnaissance, antisubmarine warfare, and the protection of shipping and minelaying, including the air aspects thereof, and controlled minefield operations.

(G) Provide air support essential for naval operations.

(H) Provide sea-based air defense and the sea-based means for coordinating control for defense against air attack, coordinating with the other Military Services in matters of joint concern.

(I) Provide naval forces, including naval air forces, for the defense of the United States against air attack, in accordance with doctrines established by the Joint Chiefs of Staff.

(J) Furnish aerial photography, as necessary, for Navy and Marine Corps operations.

(iv) The collateral functions of the Navy and the Marine Corps are to train forces to:

(A) Interdict enemy land and air power and communications through operations at sea.

(B) Conduct close air and naval support for land operations.

(C) Furnish aerial photography for cartographic purposes.

(D) Participate in the overall air effort, when directed.

(E) Establish military government, as directed, pending transfer of this responsibility to other authority.

(3) *Functions of the Department of the Air Force.* (i) The Department of the Air Force is responsible for the preparation of the air forces necessary for the effective prosecution of war, except as otherwise assigned, and, in accordance with integrated mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(ii) The Air Force, within the Department of the Air Force, includes aviation forces, both combat and service, not otherwise assigned.

(iii) The primary functions of the Air Force are to:

(A) Organize, train, and equip Air Force forces for the conduct of prompt and sustained combat operations in the air, specifically, forces to defend the United States against air attack in accordance with doctrines established by the Joint Chiefs of Staff, to gain and maintain general air supremacy, to defeat enemy air forces, to control vital air areas, and to establish local air superiority, except as otherwise assigned herein.

(B) Develop doctrines and procedures, in coordination with the other Military Services, for the unified defense of the United States against air attack.

(C) Organize, train, and equip Air Force forces for strategic air warfare.

(D) Organize and equip Air Force forces for joint amphibious and airborne operations, in coordination with the other Military Services, and provide for their training in accordance with doctrines established by the Joint Chiefs of Staff.

(E) Furnish close combat and logistical air support to the Army, to include air lift, support, and resupply of airborne operations, aerial photography, tactical reconaissance, and interdiction of enemy land power and communications.

(F) Provide air transport for the armed forces, except as otherwise assigned.

(G) Develop, in coordination with the other Military Services, doctrines, procedures, and equipment for air defense from land areas, including the continental United States.

(H) Formulate doctrines and procedures for the organizing, equipping, training, and employment of Air Force forces.

(I) Provide an organization capable of furnishing adequate, timely, and reliable intelligence for the Air Force.

(J) Furnish aerial photography for cartographic purposes.

(K) Develop, in coordination with the other Military Services, tactics, techniques, and equipment of interest to the Air Force for amphibious operations not provided in § 368.5(c)(2)(iii)(B)(3) and § 368.5(c)(2)(iii)(D).

(L) Develop, in coordination with the other Military Services, doctrines, procedures, and equipment employed by Air Force forces in airborne operations.

(iv) The collateral functions of the Air Force are to train forces to:

(A) Interdict enemy sea power through air operations.

(B) Conduct antisubmarine warfare and protect shipping.

(C) Conduct aerial minelaying operations.

§ 368.6 Functions of DoD Agencies.

(a) Defense Advanced Research Projects Agency (DARPA). See Part 358 of this title.

(b) Defense Audit Service (DAS). See DoD Directive 5105.48,[1] October 14, 1976.

(c) Defense Audiovisual Agency (DAVA). See Part 205 of this title.

(d) Defense Communications Agency (DCA). See Part 362 of this title.

(e) Defense Contract Audit Agency (DCAA). See Part 357 of this title.

(f) Defense Intelligence Agency (DIA). See Part 354 of this title.

(g) Defense Investigative Service (DIS) See Part 361 of this title.

(h) Defense Logistics Agency (DLA). See Part 359 of this title.

(i) Defense Mapping Agency (DMA). See Part 360 of this title.

(j) Defense Nuclear Agency (DNA). See DoD Directive 5105.21,[1] November 3, 1971.

(k) Defense Security Assistance Agency (DSAA). See Part 363 of this title.

(l) The National Security Agency and the Central Security Service. See DoD Directive S-5100.20, December 23, 1971.

PART 369—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

Sec.
369.1 Reissuance.
369.2 Purpose.

AUTHORITY: 10 U.S.C. 133.

SOURCE: 49 FR 8250, Mar. 6, 1984, unless otherwise noted.

---

[1] See footnote 1 to § 368.2(b)(1).

§ 369.1 Reissuance.

This Rule is reissued and updated.

§ 369.2 Purpose.

(a) In accordance with title 10, United States Code, Section 133(d), I hereby delegate to Deputy Secretary of Defense William H. Taft IV full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(b) The all-inclusive authority delegated herein may not be redelegated in toto; however, the Deputy Secretary is authorized to make specific redelegations, as required.

PART 370—DoD HEALTH COUNCIL

Sec.

370.1 Reissuance and purpose.
370.2 Applicability.
370.3 Organization and management.
370.4 Policy.
370.5 Responsibilities.
370.6 Charter, Dental Chiefs Council (DCC).
370.7 Charter, Medical Mobilization and Deployment Steering Committee.

AUTHORITY: 10 U.S.C. 133.

SOURCE: 47 FR 34983, Aug. 12, 1982, unless otherwise noted.

§ 370.1 Reissuance and purpose.

This part is reissued to update the DoD Health Council (DHC) charter, and to authorize the establishment of the DoD Dental Chiefs Council (DCC) and the Medical Mobilization and Deployment Steering Committee (MMDSC) as subordinate elements. The DCC and MMDSC charters are §§ 370.6 and 370.7.

§ 370.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Organization of the Joint Chiefs of Staff (OJCS). The term, "Military Service," refers to the Army, Navy, Air Force, and Marine Corps.

§ 370.3 Organization and management.

(a) The DHC is composed of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), who serves as the chair, the Surgeons General from each of the Military Departments, and one representative from the OJCS and from the Uniformed Services University of the Health Sciences.

(b) The Council meets regularly at the call of the chair.

(c) The Council is supported by an Executive Director who is selected by the ASD(HA). To assist the Executive Director, each member of the DHC, other than the ASD(HA), designates an officer or civilian employee within its organization on a part-time basis to prepare issue items.

(d) The Executive Director of the DHC, subject to the direction of the chair:

(1) Plans, organizes, and manages the administrative activities of the DHC.

(2) Coordinates the development of reports and issues for consideration by the DHC.

(3) Develops and coordinates plans and programs that are required to accomplish the DHC's responsibilities.

(4) Performs other directed duties.

§ 370.4 Policy.

The DHC complements the statutory responsibilities of the ASD(HA), in accordance with 32 CFR Part 367, by advising him on DoD health matters; provides a forum for consultation, discussion, and advice on DoD health plans, policies, and related issues; and facilitates coordination among the organizations represented by the DHC members.

§ 370.5 Responsibilities.

(a) In carrying out the provisions of this charter part, the *Chair, DHC*, shall:

(1) Advise the ASD(HA) on policy changes required to improve wartime readiness and the delivery of health care.

(2) Advise the ASD(HA) on coordination with other Federal agencies to enhance health care delivery.

(3) Develop and maintain health objectives with appropriate tasks and

priorities approved by the ASD(HA) that:

(i) Increase the wartime medical readiness of the Military Departments.

(ii) Increase the productivity, efficiency, and economy of the Armed Forces health care system without unnecessary duplication of resources.

(iii) Enhance recruitment, retention training, and use of health care professionals within the Armed Forces health care system to meet Military Service requirements.

(iv) Improve the effectiveness of the direct and indirect health care delivery system to meet the demands of the eligible beneficiary population.

(b) The *Assistant Secretary of Defense (Health Affairs)* shall report to the Secretary of Defense on any issue of importance that comes before the DHC and that warrants the Secretary's consideration.

§ 370.6 Charter, Dental Chiefs Council (DCC).

(a) *Purpose.* The DCC is hereby established to serve the DoD Health Council (DHC) on all matters pertaining to dental health. The DCC shall provide a forum for consultation, discussion, and advice on DoD dental health plans, policies, and related issues and shall facilitate coordination among the Dental Corps of the Military Departments.

(b) *Organization and management.* (1) The DCC shall be composed of the three Dental Corps chiefs who represent the Army, Navy, and Air Force. Each year, on a rotating basis, one of these chiefs will serve as chair of the DCC. The DCC shall meet on a scheduled basis and at the call of the chair. The chair or another designated member will be available to attend meetings of the DHC at which dental matters are considered.

(2) The DCC shall be supported by an executive secretary. The Special Assistant for Dental Affairs, Office of the ASD(HA), shall serve in this capacity. The Dental Corps chiefs shall designate an officer or civilian employee within their Military Departments to assist the executive secretary on a part-time basis in the preparation of issue and agenda items.

(3) Matters referred to the DHC will be coordinated through the DHC executive director.

(c) *Responsibilities.* (1) In carrying out the purposes and provisions of this charter, the *Dental Chiefs Council* shall:

(i) Advise the DHC through each Military Department's Surgeon General when policy changes are required to improve wartime readiness and the delivery of dental health care.

(ii) Coordinate with other Federal dental health agencies to enhance dental health care delivery.

(iii) Develop and maintain dental health objectives that will:

(A) Increase the wartime dental readiness of the Military Departments;

(B) Increase dental care productivity, efficiency, and economy within the Armed Forces health care system without unnecessary duplication of resources.

(C) Enhance recruitment, retention, training, and use of dental health care professionals within the Armed Forces health care system to meet military requirements.

(D) Improve the effectiveness of the direct and indirect dental health care delivery system to meet the demands of the eligible beneficiary population.

(2) The *Executive Secretary of the DCC* shall, subject to the direction of the chair:

(i) Plan, organize, and manage the activities of the DCC.

(ii) Coordinate the development of reports and issues for consideration by the DCC.

(iii) Develop and coordinate the plans and programs to accomplish the responsibilities of the DCC.

(iv) Perform such other duties as may be directed by the chair.

§ 370.7 Charter, Medical Mobilization and Deployment Steering Committee.

(a) *Purpose.* The MMDSC is hereby established, replacing the Medical Mobilization and Deployment Steering Group that was established under ASD(HA) Memorandum, "Medical Mobilization and Deployment Steering Group," May 8, 1981 (hereby canceled). The MMDSC acts as the agent of the Defense Health Council (DHC) in identifying and recommending solutions to problems in medical readiness, mobilization, and deployment; and by reporting to the DHC on those issues.

(b) *Organization and Management.* (1) The MMDSC comprises the Deputy Assistant Secretary of Defense (Medical Readiness) (DASD(MR)), Office of the ASD(HA), who serves as the chair; a flag or general officer from each of the Military Services; and one representative each from the OJCS, the Defense Logistics Agency, and the Office of the ASD (MRA&L).

(2) The MMDSC meets regularly at the call of the chair.

(3) The MMDSC is supported by the staff of the DASD(MR). Each member of the MMDSC provides additional support from his or her organization, as required.

(4) The DASD(MR) directs the preparation of the agenda and minutes of the MMDSC. Any member of the MMDSC may recommend agenda items.

(c) *Responsibilities*—(1) The *Medical Mobilization and Deployment Steering Committee* shall:

(i) Develop objectives for inter-Service management of wartime medical logistics and material, and review and coordinate that management.

(ii) Develop objectives for cross-Service utilization of medical personnel, and review and coordinate their attainment.

(iii) Review and coordinate peacetime training in wartime medical skills to ensure an adequate level of medical readiness.

(iv) Recommend to the DHC any policy changes needed to achieve the goal of medical readiness.

(v) Convene in time of crisis to coordinate tri-Service medical mobilization or other appropriate responses, including:

(A) The allocation of returning overseas casualties among military and civilian components of the civilian/military contingency hospital system; and

(B) The provision of medical care to military dependents, retirees and their dependents, and survivors of military members, both within the military health care system and through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

(2) The *Chair of the MMDSC* shall report to the DHC on any issue requiring its attention or resolution by higher authority.

PART 371—ORGANIZATION OF THE JOINT CHIEFS OF STAFF AND RELATIONSHIPS WITH THE OFFICE OF THE SECRETARY OF DEFENSE

Sec.
371.1 Purpose.
371.2 Responsibilities and procedures.

§ 371.1 Purpose.

(a) The Department of Defense Reorganization Act of 1958 and the President's Message to the Congress of April 3, 1958, set forth general policies, procedures, and organizational relationships required for the effective direction of the defense establishment.

(b) The President's Message singles out the accomplishment of the following objective as one of the paramount duties of the Secretary of Defense, acting with the advice and assistance of the Joint Chiefs of Staff and under the supervision of the Commander in Chief: "Strategic and tactical planning must be completely unified, combat forces organized into unified commands, each equipped with the most efficient weapons systems that science can develop, singly led and prepared to fight as one, regardless of Service."

(c) The purpose of this part is to implement the Department of Defense Reorganization Act of 1958 and the President's Message of April 3, 1958, with respect to the Organization of the Joint Chiefs of Staff and its relationship with the major offices in the Office of the Secretary of Defense, such as the Under Secretaries of Defense, the Assistant Secretaries of Defense, the General Counsel of the Department of Defense, the Assistants to the Secretary of Defense, and the heads of other offices established by the Secretary of Defense.

(d) The functions of the Department of Defense and its major components have been set forth in DoD Directive 5100.1, "Functions of the Department

BEST COPY AVAILABLE

of Defense and its Major Components," January 26, 1980.

(10 U.S.C. 133)

[45 FR 34881, May 23, 1980]

§ 371.2 Responsibilities and procedures.

(a) The duties of the Chiefs of the Military Services as members of the Joint Chiefs of Staff shall take precedence over all of their other duties. To ensure that the Chief of the Military Services have adequate time to devote to their duties as members of the Joint Chiefs of Staff, they shall delegate appropriate duties to their Vice Chiefs.

(b) The Joint Chiefs of Staff shall, in discharging their responsibilities, avail themselves of the most competent and considered thinking that represents every pertinent point of view, such as scientific, industrial, economic, as well as military.

(c) To ensure that planning and operations are of the highest order:

(1) All elements of the Organization of the Joint Chiefs of Staff shall cooperate fully and effectively with appropriate offices of the Office of Secretary of Defense. In all stages of important staff studies, the Organization of the Joint Chiefs of Staff shall avail itself of the views and special skills in the Office of the Secretary of Defense. As a normal procedure, specialized data necessary for the preparation of such studies shall be obtained from or through the appropriate offices of the Office of the Secretary of Defense.

(2) The Directors of the various Directorates of the Joint Staff shall maintain active liaison with appropriate offices of the Office of the Secretary of Defense. This shall include, but not be limited to, an exchange of information, interchange of technical advice, and guidance for mutual benefit. The heads of offices in the Office of the Secretary of Defense shall maintain similar liaison and make representatives available to meet formally or informally with appropriate members of the Organization of the Joint Chiefs of Staff.

(d) Directives and orders to the Joint Chiefs of Staff shall be issued by the Secretary or the Deputy Secretary of Defense. Requests to the Joint Chiefs of Staff or to the Chairman of the Joint Chiefs of Staff involving action by the Joint Chiefs of Staff may be issued by responsible officials of the Office of the Secretary of Defense, in accordance with authority specifically delegated by the Secretary of Defense.

(e) Development of strategic and logistic plans shall be based on the broadest concepts of overall national interests. Personnel of the Organization of the Joint Chiefs of Staff shall be selected for their competency and their ability to support such interests.

(f) The Chairman of the Joint Chiefs of Staff shall have the authority and responsibility to:

(1) Serve as a member of and preside over the Joint Chiefs of Staff.

(2) Provide the agenda for meetings of the Joint Chiefs of Staff and assist them in prosecuting their business as promptly as is practicable.

(3) Furnish the Secretary of Defense with periodic progress reports on important items of current interest that are being considered by the Joint Chiefs of Staff.

(4) Keep the Secretary of Defense informed on issues upon which agreement among the Joint Chiefs of Staff has not been reached, and forward to the Secretary of Defense the recommendations advice, and views of the Joint Chiefs of Staff, including any divergencies.

(5) Arrange for the provision of military advice to all offices of the Office of the Secretary of Defense.

(6) Make arrangements to relieve the Joint Chiefs of Staff of matters of lesser importance.

(7) Organize the Joint Staff and the subordinate structure of the Organization of the Joint Chiefs of Staff to ensure that they are designed to accomplish efficiently the tasks to be assigned.

(8) Manage the Joint Staff and its Director on behalf of the Joint Chiefs of Staff by conducting, guiding, administering the work of the elements affected, and ensuring that the work is performed in a manner that permits the Secretary of Defense and the Joint Chiefs of Staff to discharge their total responsibilities. The Joint Staff shall perform such duties as the

Joint Chiefs of Staff or the Chairman of the Joint Chiefs of Staff prescribes.

(9) Keep the Joint Chiefs of Staff informed, as appropriate, about any matter that is referred by the Chairman to the Secretary of Defense with a recommendation that the matter be assigned to a Military Department for consideration or action.

(10) Appoint consultants to the Joint Chiefs of Staff from outside the Department of Defense, subject to the approval of the Secretary of Defense and with the advice of the Joint Chiefs of Staff.

(g) The selection of the Director, Joint Staff, and of the members of the Organization of the Joint Chiefs of Staff shall be as follows:

(1) The Director, Joint Staff, shall be selected and his tenure fixed by the Chairman of the Joint Chiefs of Staff, in consultation with the Joint Chiefs of Staff and with the approval of the Secretary of Defense. The normal tenure of the Director shall be 2 years. Any extension of this tenure may not exceed 1 year, except in time of war.

(2) The members of the Organization of the Joint Chiefs of Staff shall be selected by the Joint Chiefs of Staff with the approval of the Chairman of the Joint Chiefs of Staff.

(h) The duties and manner of operation of the Operations Deputies shall be prescribed by the Joint Chiefs of Staff.

(i) In order to carry out the objectives of paragraph (c) of this section, the Director, Joint Staff, and appropriate heads of offices in the Office of the Secretary of Defense have the specific duty and authority of ensuring that there is full cooperation between their respective agencies.

(10 U.S.C. 133)

[45 FR 34881, May 23, 1980]

PART 372—AMERICAN FORCES INFORMATION SERVICE

Sec.
372.1 Purpose.
372.2 Applicability.
372.3 Mission.
372.4 Organization and management.
372.5 Responsibilities and functions.
372.6 Relationships.
372.7 Authority.
372.8 Administration.
ENCLOSURE 1—DEFINITIONS
ENCLOSURE 2—DELEGATIONS OF AUTHORITY

AUTHORITY: 10 U.S.C. 133.

SOURCE: 45 FR 34882, May 23, 1980, unless otherwise noted.

§ 372.1 Purpose.

Under the authority vested in the Secretary of Defense by title 10, U.S.C., this part defines the mission, functions, authorities, and relationships of the American Forces Information Service (AFIS) and establishes the American Forces Information Council (AFIC).

§ 372.2 Applicability.

This part applies to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 372.3 Mission.

(a) The AFIS shall:

(1) Provide joint interest print, radio, and television materials for use in the internal information programs of the Military Departments and other DoD Components.

(2) Advise and assist the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) in the management of DoD internal information programs.

(b) The AFIC shall serve as a forum for the exchange of information and advice on DoD internal information matters.

§ 372.4 Organization and management.

(a) The AFIS is established as a field activity of the Office of the Secretary of Defense under the direction, authority, and control of the ASD(PA). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources assigned by the Secretary of Defense.

(b) The AFIC is established as a policy committee reporting to the

ASD(PA). It shall consist of the following:

(1) A chair, who shall be designated by the ASD(PA).

(2) A representative from each Military Department and the AFIS.

(3) An Executive Secretary, who shall be designated by the ASD(PA).

§ 372.5 Responsibilities and functions.

(a) The *Secretaries of the Military Departments* shall:

(1) Conduct internal information activities pertaining to their Department's programs, operations, and activities.

(2) Operate information and entertainment broadcast outlets (American Forces Radio and Television (AFRT)) in designated geographic areas.

(3) Centrally manage and control all AFRT activities of their Departments.

(b) The *Assistant Secretary of Defense (Public Affairs)* shall:

(1) Develop policies and provide guidance on the Administration of DoD internal information programs.

(2) Designate geographic areas of responsibility for the operation of Military Department AFRT broadcast outlets, and exercise program and resource management control of AFRT, through the AFIS.

(3) Provide policy and operational direction to the Director, AFIS.

(c) The *Commanders of the Unified Commands* shall:

(1) Develop plans for and assume control of AFRT facilities within their geographic areas of responsibility during periods of military contingency, as required, to ensure a coordinated internal information effort.

(2) Notify the Secretaries of the Military Departments and the ASD(PA) expeditiously of military contingency occurrences, and return control to the Military Departments immediately upon termination of the contingency situation.

(3) Provide advice with respect to host country sensitivities concerning the nature and content of radio and television programs.

(d) The *Director, American Forces Information Service*, shall:

(1) Organize, direct, and manage the AFIS and all assigned resources.

(2) For print media internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of periodicals, armed forces newspapers, and civilian enterprise publications, including the provisions of Parts 202 and 248 of this title.

(ii) Serve as DoD point of contact in the United States for Unified Command newspaper matters.

(iii) Serve as DoD point of contact with the Congressional Joint Committee on Printing for matters pertaining to DoD periodicals, armed forces newspapers, and civilian enterprise publications.

(iv) Develop and publish appropriate internal information material of a DoD-wide, joint-interest nature.

(3) For AFRT radio and television internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management and operation of broadcasting and mini-TV activities, including the provisions of DoD Instruction 5120.20[1], "American Forces Radio and Television (AFRT)," April 26, 1971.

(ii) Exercise fiscal and manpower resource control through the Planning, Programming, and Budgeting System. Provide guidance on, review, and approve or revise proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(iii) Administer centralized management information and resource management systems, in accordance with DoD Directives 5000.19,[1] "Policies for the Management and Control of Information Requirements," March 12, 1976, and 5000.11,[1] "Data Elements and Data Codes Standardization Program," December 7, 1964.

(iv) Establish guidelines for and authorize the establishment of new stations, the disestablishment of existing stations, and the configuration of broadcast networks.

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 301.

(v) Develop and maintain a program for the standardization of broadcast equipment. Establish broadcast equipment technical specifications and performance standards, and certify equipment for use.

(vi) Establish manning standards for stations and overhead staffs, and qualifications standards for broadcast and technical support personnel. Review and concur or nonconcur in the selection of network commanders.

(vii) Negotiate for, acquire, and provide public service and commercial program materials, and a free flow of general and military news, sports, and current events programs.

(4) Develop and provide DoD information training requirements and guidance, and provide liaison with the Defense Information School, established under DoD Directive 5160.48,[1] Department of Defense Information Training," February 21, 1964.

(5) Perform other related internal information functions that the ASD(PA) may assign.

(e) The *Members of the American Forces Information Council* shall meet periodically to:

(1) Consider questions of policy and advise the ASD(PA) with respect to internal information programs.

(2) Exchange information among the membership.

§ 372.6 Relationships.

(a) In the performance of assigned functions, the Director, AFIS, shall:

(1) Coordinate actions with other DoD Components having collateral or related functions in the field of assigned responsibility.

(2) Maintain appropriate liaison with DoD Components and other governmental and nongovernmental agencies for the exchange of information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other governmental agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, AFIS, on all matters related to the mission, responsibilities, and functions of AFIS.

§ 372.7 Authority.

The Director, AFIS, is authorized to:

(a) Obtain from DoD Components consistent with the policies and criteria of DoD Directive 5000.19, information, advice, and assistance necessary to carry out AFIS programs and activities.

(b) Communicate directly with appropriate personnel in the Military Departments and other DoD Components on matters related to AFIS programs and activities.

(c) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out the functions assigned under this Directive.

(d) Exercise the administrative authorities contained in enclosure 2 of this part.

§ 372.8 Administration.

(a) The Director, AFIS, shall be selected by the ASD(PA).

(b) The AFIS shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense considers necessary.

(c) The Military Departments shall assign military personnel to AFIS in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Administrative support for AFIS shall be provided by DoD Components through interservice support agreements in accordance with DoD Directive 4000.19,[1] "Basic Policies and Principles for Interservice, Interdepartmental and Interagency Support," March 27, 1972.

ENCLOSURE 1—DEFINITIONS

Acquisition. The process through which broadcast equipment, programs, materials, products, and services are obtained from public and commercial sources.

---

[1] See footnote 1 to § 372.5(d)(3)(i).

[1] See footnote 1 to § 372.5(d)(3)(i).

Broadcast activities. Organizations or functions relating to the management of radio and television resources or the provision of services and products, to include equipment, facilities, personnel, supplies, accessions, maintenance, and support.

Broadcast equipment. Items of a durable nature used for recording, producing, mixing, reproducing, broadcasting, and all items commonly used in the broadcasting and television industry for the recording, processing, distribution, reproduction, and transmission of radio and TV signals.

Broadcast facilities. Physical plants in which broadcast activities are housed.

Broadcast network. Multiple radio and/or television stations linked by transmission lines, microwave, coaxial cable, or satellite.

Broadcast outlet. Any radio, television, relay station, or closed-circuit installation, authorized by Director, AFIS, in accordance with policy, to broadcast radio or television programs.

Broadcast programs. Radio or television program materials authorized for transmission by authorized broadcast outlets.

Internal information. All information that is intended to keep DoD military and civilian personnel, and their dependents, fully informed on matters concerning their morale and well being. This includes information disseminated through publications, periodicals, radio and television, motion picture, videotape, and related media.

Mini-TV. A self-contained videotape playback system used in remote or isolated areas not accessible to a radiated AFRT television signal.

Print media. Printed publications issued in support of the internal information program of the Department of Defense. This includes, but is not limited to, newspapers, periodicals, newsletters, news summaries, and news bulletins.

ENCLOSURE 2—DELEGATIONS OF AUTHORITY

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, AFIS, or, in the absence of the Director, the person acting for the Director is hereby delegated authority, as required in the administration and operation of AFIS, to:

1. Perform the following functions in accordance with the provisions of 5 U.S.C. 7532 (1976), Executive Order 10450, as amended, 3 CFR 936 (1949-1953 Compilation), reprinted as 5 U.S.C. 7311 (1976):

a. Designate any position in AFIS as a sensitive position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in AFIS for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Security Check, has not been completed; and

c. Authorize the suspension, but not the termination of services, of an employee in the interest of national security in positions within AFIS.

2. Authorize and approve overtime work for AFIS civilian employees, in accordance with the Federal Personnel Manual, Supplement 990-1, § 550.111 (5 CFR 550.111 (1978)).

3. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C.A. 3102 (1969 and Supplement 1978).

4. Authorize the publication of advertisements, notices, or proposals in public periodicals, as required for the effective administration of AFIS, pursuant to 44 U.S.C. 3702 (1970).

5. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directives System," November 18, 1977.

PART 372a—AMERICAN FORCES RADIO AND TELEVISION SERVICE (AFRTS)

Sec.

372a.1 Purpose.
372a.2 Applicability.
372a.3 Policy.
372a.4 Responsibilities.
372a.5 Information requirements.
372a.6 Definitions.
ENCLOSURE 1—AFRTS MANAGEMENT AND OPERATIONS

AUTHORITY: 10 U.S.C. 133.

SOURCE: 46 FR 5956, Jan. 21, 1981, unless otherwise noted.

§ 372a.1 Purpose.

This rule:

(a) Reflects the AFRTS organization, states policy, and assigns responsibilities for the AFRTS.

(b) Authorizes the development and publication of DoD 5120.20-R, "Management and Operation of AFRTS," in compliance with DoD Directive 5025.1,[1] "DoD Directives System," October 16, 1980. Upon publication of DoD 5120.20-R, enclosure 1 of this part will be canceled and any subsequent reference to enclosure 1 will be deemed a reference to the relevant provision of DoD 5120.20-R.

---

[1] See footnote 1 to § 372.5(d)(3)(i).

§ 372a.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff and the Unified and Specified Commands, and the Defense Agencies (referred to herein as "DoD Components"). As used in this part, the term "Military Services" refers to the Army, Navy, Air Force, and Marine Corps.

§ 372a.3 Policy.

(a) The *American Forces Radio and Television Service,* an activity of the American Forces Information Service (AFIS), under the direction of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)):

(1) Supports the internal information program of the Department of Defense, as stipulated in 32 CFR Part 372 by providing a broad range of information and entertainment programing, through the radio and television media, to overseas DoD personnel and their dependents. As used in this Directive, the term "overseas" refers to geographic locations outside of the contiguous United States including Navy ships at sea, Alaska, and Hawaii.

(2) Provides U.S. military commanders, worldwide, with unique means to communicate internal information directly to DoD personnel overseas.

(3) Assists in maintaining and enhancing the morale, readiness, and well-being of DoD personnel.

(4) Does not seek to compete for audiences with any other broadcast facility or organization. AFRTS broadcasts are directed toward DoD audiences overseas. The fact that others may receive these broadcasts is the result of electronic media characteristics.

(5) Does not endorse or imply DoD endorsement of any commercial product or service.

(6) Is part of the internal information program of the Department of Defense. Funds appropriated for AFRTS may not be used to support external information programs.

(b) *American Forces Radio and Television Service Outlets:*

(1) Operate under the centralized management and control of the Military Departments, in accordance with the policies and procedures developed by the Director, AFIS, under the provisions of this part and 32 CFR Part 372.

(2) Adhere to AFIS broadcast policy, which prohibits censorship, propagandizing, or manipulation, and which mandates that overseas DoD personnel and their dependents are entitled to the same type of information and entertainment programing as their fellow citizens in the United States.

(i) This policy is subject to the following considerations:

(A) *Host Country Sensitivities.* AFRTS outlets operate in foreign countries with the approval of the host government which assigns broadcast frequencies. Program topics considered sensitive to a host country may be restricted from broadcast on an AFRTS outlet. Such restrictions shall be based soley on official determination by the U.S. Embassy or U.S. Country Team.

(B) *Area Restrictions.* When legal owners of programs prohibit AFRTS from broadcasting certain programs in specified geographic areas, these restrictions must be honored.

(ii) The above considerations do not permit the calculated withholding or editing of information and entertainment programing based on personal taste or preference. Such practices constitute censorship and are prohibited.

(3) Shall give maximum use to information and entertainment programing provided by the AFRTS Programing Center located in Los Angeles, California, and to Service-produced internal information programing distributed by the Military Departments. AFRTS outlets may produce local information, entertainment and religious programing to meet internal information objectives.

(4) May not produce news editorials, commentary, or analysis; engage in investigative reporting; or initiate political news coverage.

(5) Shall protect all programing and associated broadcast products from unauthorized use. These materials remain in the custody of the Department of Defense.

(6) May be advised by the Director, AFIS, to broadcast special programing on certain occasions. Failure to comply with this requirement must be justified to the ASD(PA).

(7) May not offer broadcasts in other than the English language, except as stated in subsection C.2., enclosure 1.

(8) May be used to promote military training or off-duty education. However, AFRTS facilities may not be used for training or educational purposes except at designated remote sites and aboard Navy ships, and as stated in paragraph C.2.b., enclosure 1. Further exceptions to this policy shall be considered by the Director, AFIS, on a case-by-case basis. In no instance shall the primary mission of AFRTS be jeopardized.

(9) May not use films and program materials from the Army and Air Force Exchange Service and the Navy Motion Picture Service.

(c) The *American Forces Radio and Television Service Programing Center*, a field activity of the AFIS:

(1) Provides information and entertainment programing for the exclusive use of AFRTS outlets.

(2) Is the only source authorized to negotiate for, procure, and distribute commercial and public broadcasting programing, except as stated in paragraph C.3.k., enclosure 1. Further exceptions to this policy will be considered by the Director, AFIS, on a case-by-case basis.

(3) Provides internal information programing and distributes radio and television spot announcements provided by the AFIS, in support of DoD internal information themes, goals, and objectives.

(4) Provides religious programing approved solely by the Armed Forces Chaplains Board, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) Establishes procedures to alert AFRTS outlets of specific entertainment programing containing discretionary subject matter including that considered sensitive to a host country.

§ 372a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Public Affairs)* shall:

(1) Comply with 32 CFR Part 372.

(2) Provide policy and operational direction to the Director, AFIS, for the management and operation of AFRTS.

(3) Issue directive-type memorandums and provide policy guidance to AFRTS centralized management elements within the Military Departments.

(b) The *Director, American Forces Information Service*, shall:

(1) Comply with 32 CFR Part 372.

(2) Develop policies and procedures, and oversee their implementation, for the management and operation of the AFRTS radio and television broadcasting activities of the Department of Defense; and evaluate and direct corrective action by the Military Departments to ensure AFRTS is properly structured and managed.

(3) Exercise AFRTS fiscal and personnel resource control through the Planning, Programing, and Budgeting System, and monitor the implementation of approved programs.

(4) Authorize the configuration and capabilities of AFRTS outlets.

(5) Ensure a free flow of information and entertainment programing to overseas DoD personnel and their dependents without censorship, propagandizing, or manipulation.

(6) Ensure that all AFRTS broadcast activities are in conformance with host country rules and regulations governing radio and television transmissions, and are guided by the applicable rules and regulations of the Federal Communications Commission (FCC), and the Radio and Television Codes of the National Association of Broadcasters (NAB).

(7) In coordination with the Military Departments, establish standards for the training of management, production, and technical staffs; and for the operation and maintenance of equipment at AFRTS outlets.

(8) Establish and develop policies for a worldwide radio and television satel-

lite distribution system to designated AFRTS outlets.

(9) Oversee management of the AFRTS Programing Center.

(10) Issue instructional-type memorandums and provide policy guidance to the Military Departments for ASD(PA) approved programs.

(11) As appropriate, consult with and inform Unified/Specified Commands on matters that impact on their mission and responsibilities.

(c) The *Commanders of the Unified and Specified Commands* shall:

(1) Comply with 32 CFR Part 372.

(2) Provide the Director, AFIS, and the Military Departments with contingency plans to assume control of AFRTS outlets.

(3) Provide a list of subjects considered sensitive to host countries as related to AFRTS programing in accordance with § 372a.5(c) of this part.

(4) Upon request of the Director, AFIS, negotiate agreements or memorandums with host countries authorizing the establishment and continuance of AFRTS outlets.

(5) Upon request of the Director, AFIS, negotiate agreements, contracts, and clearances with music and performing arts societies of host countries.

(6) Ensure that nothing inhibits the free flow of radio and television information and entertainment programing to overseas DoD personnel and their dependents.

(d) The *Secretaries of the Military Departments* shall:

(1) Comply with 32 CFR Part 372.

(2) Through their respective AFRTS centralized management elements, provide all personnel, financial, engineering, maintenance, and logistics resources to establish, centrally manage, control, operate, and maintain AFRTS outlets, in accordance with this part, 32 CFR Part 372, 32 CFR Part 169, and 32 CFR Part 169a.

(3) Ensure that a U.S. citizen is designated as a commander or manager of an AFRTS outlet. This individual may be either military or civilian. Civilians must be employed by the U.S. Government, or a concern under contract to the U.S. Government. Exceptions may be granted when required by a host country agreement.

(4) Establish and maintain centralized equipment allowances and authorizations for AFRTS outlets, in accordance with DoD Directive 5040.2,[1] "Audiovisual Activities," July 23, 1979 and DoD 5040.2-R, "Management and Operation of DoD Audiovisual Activities," November 1979, and the provisions of the AFIS program for the standardization and certification of broadcast equipment.

(5) Ensure that nothing inhibits the free flow of radio and television information and entertainment programing to overseas DoD personnel and their dependents.

(6) Negotiate an Interservice Support Agreement, in accordance with Section D., enclosure 1, of this part, and DoD Directive 4000.19,[1] "Interservice, Interdepartmental and Interagency Support," October 14, 1980, when an AFRTS outlet serves personnel of more than one Military Service. Normally, these agreements will be negotiated at the lowest feasible level. Differences in reaching agreements shall be adjudicated by the Director, AFIS.

(e) The *Secretary of the Army* shall designate the U.S. Army Materiel Development and Readiness Command (DARCOM) to provide support to the DoD-wide AFRTS mission. Responsibilities shall be delegated to the Television-Audio Support Activity (T-ASA), a DARCOM activity located at the Sacramento Army Depot, California. This is in accordance with DoD Instruction 4115.1,[1] "DoD Coordinated Procurement Program Purchase Assignments," September 1, 1972, and the policy direction provided by the Director, AFIS. T-ASA shall comply with the provisions of section E, enclosure 1.

(f) *Heads of DoD Components* shall follow the AFRTS management and operations procedures found in enclosure 1.

§ 372a.5 Information requirements.

(a) The Audiovisual (AV) Annual Report, DD Form 2054, Report Control Symbol DD-PA(A)1348 shall be completed in accordance with the provisions of DoD Directive 5040.2, and DoD 5040.2-R.

---

[1] See footnote to § 372.5(d)(3)(i).

(b) The AFRTS Outlet/Network Registration, DD Form 2137, Report Control Symbol DD-PA(AR)1572, shall be submitted through channels to the Director, AFIS, at the time of initiation of a request for an AFRTS outlet and within 30 days of a substantive change affecting an AFRTS outlet.

(c) The AFRTS host country Sensitive Subject Summary Narrative Report, Report Control Symbol DD-PA(A&AR)1537, shall be submitted to: the Director, AFIS; the Director, AFRTS Programing Center; and the Commandant, DINFOS. Public Affairs Officers of Unified and Specified Commands, or other major commands having AFRTS outlets under their cognizance, shall forward this report annually and as changes, additions, and deletions occur. Annual reports are due September 15th of each year.

§ 372a.6 Definitions.

(a) *AFRTS.* A worldwide broadcast organization that comprises: (1) An AFRTS headquarters element within AFIS; (2) the AFRTS centralized management elements within the Military Departments; (3) AFRTS outlets around the world; and (4) the AFRTS Programing Center in Los Angeles, California.

(b) *AFRTS outlet.* Any facility authorized by the Director, AFIS, in accordance with policy to disseminate radio or television programing. An outlet includes AFRTS radio and television stations and networks, relay sites, translators, Navy ships using AFRTS program materials, mini-TV sites, and any other AFRTS broadcast facility.

(c) *AFRTS Network.* Two or more AFRTS stations, authorized by the Director, AFIS, to disseminate programing through interconnecting broadcast quality transmission circuits.

(d) *AFRTS Mini-TV.* A self-contained videotape playback system used in remote or isolated areas not accessible to a radiated AFRTS television signal.

(e) *AFRTS Programing Center.* A field activity of the AFIS located in Los Angeles, California, which provides information and entertainment programing to AFRTS outlets.

(f) *Censorship.* The withholding or editing of information and entertainment programing, when such action is not supported by legitimate host country sensitivities or by broadcast restrictions imposed by program owners.

(g) *Host country sensitivities.* Topics that are restricted from broadcast on an AFRTS outlet when determined by the U.S. Embassy or U.S. country team, normally in writing, to be sensitive to the host country concerned.

(h) *Information programing.* Radio and television programing that communicates knowledge and includes: world, national (U.S.), Service, major/local command, community, and host country news; sports news; analysis and commentary; public affairs; and spot announcements on internal information themes.

(i) *Entertainment programing.* Radio and television programing that affords pleasure, diversion or amusement, such as comedy, drama, variety, play-by-play sports, and musical recordings.

ENCLOSURE 1—AFRTS MANAGEMENT AND OPERATIONS

A. Procedures

1. *Establishment of an AFRTS Outlet.* In accordance with responsibilities and policies established herein, an AFRTS outlet may be proposed for establishment wherever a requirement for such a communication medium can be demonstrated.

a. Upon determining that there is a need for an AFRTS outlet and before the investment of funds, the local command will forward a request to the appropriate Military Department with an information copy to the appropriate Unified/Specified Command. The Military Department will take steps to ensure that funds, personnel, administrative, and logistics support are available prior to submitting the request for the approval of the Director, AFIS. The Military Department will provide the following information for the consideration of the Director, AFIS, keeping the appropriate Unified/Specified Command informed:

(1) Number of military (by branch of Service) and civilian DoD personnel and dependents who will benefit from the outlet.

(2) Amount and format of English language programing currently available.

(3) Designation of the activity that will exercise immediate control over the outlet.

(4) Type of outlet and physical location.

(5) Staffing plan for the outlet, including the number of military and civilian spaces to be allocated.

(6) Financial plan to fund for the outlet, including the amount of investment, and operation and maintenance estimates.

(7) Estimated "on-air" date.

(8) Copy of frequency allocation authorization or other suitable documentation, if radiating.

(9) Copy of the agreement with the host government when the outlet is to be based in a foreign country. When no formal written agreement has been negotiated, a memorandum of understanding or record from the U.S. Embassy or U.S. Country Team will suffice.

(10) Appropriate documentation in compliance with 32 CFR 169, 32 CFR Part 169a when applicable.

b. In considering any request for a new AFRTS outlet, the following criteria will apply:

(1) An outlet in a foreign country will abide by existing treaties, agreements, or regulations. Outlets located in other than foreign countries will not cause interference, as determined under the rules of the FCC, to licensed broadcast stations.

(2) An outlet will not be operated within the United States, except in certain isolated areas or where the Director, AFIS, determines that U.S. commercial radio and television programs are inadequate.

(3) An outlet will not be established when the Director, AFIS, determines that English language commercial, public, or government radio and television programs are adequate.

c. With the exception of designated mobile stations during time of war and Navy ships at sea, the geographic location of authorized AFRTS outlets will not be changed without approval of the Military Department concerned. The Director, AFIS will be advised in advance of such proposed changes. The appropriate Unified/Specified Command will be informed.

d. Changes or modifications to equipment that will alter materially the type of broadcast, the broadcast coverage area, or will result in a condition contrary to host country agreements, will not be made without approval of the Military Department concerned in coordination with the appropriate Unified/Specified Command. The Director, AFIS, will be advised in advance of such proposed changes.

e. For new outlets requiring AFRTS program materials, the Military Departments will furnish the Director, AFIS, and the appropriate Unified/Specified Command, an advisory at least 90 days prior to the planned "on-air" date, and an updated advisory 30 days prior to the firm "on-air" date.

f. Frequency assignment parameters (frequency, emission, power, or time restrictions) will not be exceeded without the approval of the Director, AFIS, and the appropriate broadcast frequency assignment authority.

g. A request for the establishment of a relay station as an AFRTS outlet will be considered only if it is intended to relay programs from an existing AFRTS outlet.

2. *Disestablishment of an AFRTS outlet.* When a need no longer exists for an AFRTS outlet, the responsible Military Department in coordination with the appropriate Unified/Specified Command, will obtain the approval of the Director, AFIS, to disestablish and will:

a. Notify the appropriate U.S. Embassy or U.S. Country Team of the disestablishment, if the outlet is located in a foreign country, and forward a copy of the notification to the Director, AFIS.

b. Advise the JCS and the Office of the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) (ASD(C3I)) when FCC jurisdiction is involved.

c. At least 60 days prior to disestablishment, request from the AFRTS Programing Center disposition instruction for program materials.

d. Determine equipment disposition and furnish appropriate instructions to the outlet.

e. Notify the appropriate broadcast frequency assignment authority.

3. *Station Identification.*

a. AFRTS networks and stations will:

(1) Identify themselves at prescribed regular intervals in compliance with international and host country regulations. If call letters, an identifying phrase, or a local television on-air logo has been assigned by the appropriate Military Department with the approval of the Director, AFIS, they may be used. If call letters or an identifying phrase has not been assigned, the network or station identification will be made as follows: "This is the American Forces Radio and Television Service," followed by the city, geographical location, or name of the Navy ship.

(2) Identify themselves at least once daily, or at sign-on and sign-off, as "This is the American Forces Radio and Television Service."

(3) Play the National Anthem of the United States at the normal sign-on and sign-off times, if not in contravention with an existing agreement with a host country. Networks and stations operating 24 hours a day will play the National Anthem at least once a day at the most appropriate time.

b. Networks will not be identified as such unless they exist in fact, and then they will be identified as being operated for the benefit of the American Forces as a whole.

4. *Emergency Announcements.* AFRTS outlets may not broadcast emergency announcements without clearance from an appropriate local commander or the AFRTS outlet commander/manager, who must verify the requirement. Recall, alert, or maneuver announcements for training purposes are not considered emergency announcements and will not be broadcast.

B. AFRTS Program Materials

1. *Authorization.* AFRTS program service may be authorized only for approved AFRTS outlets. Requests for this service will be made to the Director, AFIS, through the appropriate Military Department, keeping the Unified/Specified Command informed.

2. *Ownership.* All AFRTS program materials remain in the custody of the DoD and are restricted for use on AFRTS outlets only. The use or reproduction of AFTS program materials, in whole or in part, for any other purpose is prohibited without specific authorization from the Director, AFIS, or as prescribed in paragraphs B.5.e. and B.5.f. of this enclosure.

3. *Disposition.*

a. AFRTS program materials, including spot announcements, on hand at AFRTS outlets will be screened at least semi-annually to ensure that obsolete recordings, spot announcements, and films are removed from station libraries.

b. AFRTS outlets will obtain disposition instructions for outdated program materials from the AFRTS Programing Center.

c. When disposal has been authorized by the AFRTS Programing Center, the program materials will be disposed of in accordance with furnished instructions. Certified statements of such disposition will be forwarded to the Programing Center.

d. To meet emergency situations AFRTS outlets will develop contingency plans for removing or destroying AFRTS program materials.

4. *Restrictions.*

a. AFRTS program materials will not be used:

(1) On foreign or domestic commercial, private, or government-owned broadcasting stations without specific authorization from the Director, AFIS.

(2) In a program originating from a military installation and broadcast by a commercial station.

(3) As a feed from a hospital program broadcasting system to provide entertainment for such nontherapeutic activities as service clubs, staff quarters, barracks, and offices.

(4) In any manner that constitutes competition with, or is detrimental to commercial artists, copyright owners, or other private interests determined to be competitive.

(5) For direct projection exhibitions.

(6) Aboard Navy ships, while the ships are in port and within range of U.S. commercial stations broadcasting or telecasting U.S. programs.

b. Program materials produced by AFRTS outlets will not be made available to commercial, private, or government-owned radio or television stations or networks, or their representatives, without approval through normal public affairs channels.

5. *Use.*

a. AFRTS program materials will be broadcast as received from the AFRTS Programing Center. Editing, for any purpose, is prohibited without prior approval of the Programing Center, except as prescribed in paragraphs e. and f., below.

b. TV information programing designated as "priority" by the AFRTS Program Center will be aired by AFRTS outlets in local prime time. Requests for exceptions to this requirement will be submitted to the Director, AFIS. (This requirement does not apply to Navy ships, when such broadcasts would interfere with operational commitments.)

c. Program materials furnished by the AFRTS Programing Center may be taped for delayed broadcast only when authorized by the Programing Center. The same security measures will apply to duplicate copies as to original recordings. All copies will be erased as soon as operational requirements are met. None will be retained without authority from the Programing Center.

d. AFRTS outlets may excerpt individual musical recordings from AFRTS radio programs for continuing local use.

e. AFRTS outlets may delete material in entertainment programing to remove host country sensitivities. To facilitate this process outlets are authorized to reproduce (dub) the original program. Such reproductions will be erased immediately after airing. The AFRTS Programing Center will be notified when deletions for sensitivities are made.

f. AFRTS outlets may use short excerpts electronically edited (dubbed) out of television shows or feature films for the purpose of informing viewers of upcoming television programs. The use of these excerpts (for promotionals) will meet specific criteria provided by the AFRTS Programing Center.

g. AFRTS outlets may not conduct fund-raising radiothons or telethons in support of the overseas Combined Federal Campaign. Outlets may conduct such fund-raising programs in support of command relief, welfare, and organizational activities within the limits of DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," April 7, 1978.

h. AFRTS outlets may use program materials furnished by the AFRTS Programing Center for broadcasts originating from remote locations providing the following criteria are met:

(1) Adequate justification exists to preclude broadcast of the program from the studios of the AFRTS outlet.

(2) The primary purpose of the remote broadcast is not to provide entertainment to an audience at the remote location.

(3) The preponderance of the audience at the remote location does not comprise foreign nationals.

(4) The length of the remote broadcast conforms to similarly formatted programs broadcast from the studios of the AFRTS outlet.

(5) Upon termination of the remote broadcast, AFRTS program materials will not continue to be used at the remote location.

(6) All agreements with host country organizations that have music rights are observed.

C. Programs

1. *Authorized Programs.*

a. Except for those programs supplied or authorized by the AFRTS Programing Center and those specified in paragraph b., below, no AFRTS outlet may broadcast or rebroadcast any program produced in behalf of private or commerical interests or foreign governments without the approval of the Director, AFIS.

b. In certain instances, programs, events, or ceremonies broadcast by a foreign government or agency may be considered of sufficient cultural or informational value to warrent broadcast by AFRTS outlets. No broadcast of this nature may be made without the express permission of the originating or controlling foreign government or agency. Use of such programs requires the concurrence of the appropriate Military Department. The Director, AFIS, will be notified.

c. All requests for satellite program service will be submitted to the Director, AFIS, through the appropriate Military Department and with a copy to the appropriate Unified/Specified Command. The Director, AFRTS Programing Center, will effect coordination and circuit-order validation with communications carriers.

d. Military Departments may authorize AFRTS outlets under their command to produce local programing, including live broadcasts and spot announcements.

2. *Foreign Language Broadcasts.* Broadcasts in other than the English language may not be made without obtaining approval from the Director, AFIS, except as outlined below:

a. Those broadcasts designed to satisfy the needs of U.S. Forces speaking other than the English language.

b. Programs or announcements in the language of the host country, with adequate English translation, addressed specifically to DoD personnel to increase their knowledge of the language, and appreciation of the host country, its customs, background, and people.

c. Official requests by the host government to alert its civilian population of emergency conditions, such as storms, floods, and earthquakes. Such announcements must be confirmed and approved for broadcast by the U.S. Country Team or senior host command. The appropriate Unified/Specified Command, and the Director, AFIS, will be advised as soon as possible of the circumstances and action taken.

3. *News Programs.*

a. The AFRTS Programing Center will provide a broad spectrum of news programs and materials from the major U.S. commercial and public broadcasting networks and wire services. This service provided by the Programing Center will be the principal source of world and national (U.S.) news for AFRTS outlets.

b. The DoD has assured the U.S. commercial and public networks that it will protect the integrity of all news programs and materials. No change will be made in the editorial content of any news programs and materials used. Radio news actualities and correspondents' reports may be excerpted from network newscasts, but must be excerpted in their entirety. Radio actualities presented within correspondents' reports may not be excerpted. Television news programing may not be excerpted in any manner unless specifically authorized by the AFRTS Programing Center. If television news programing is procured locally by an AFRTS outlet, as authorized in paragraph k. of this enclosure the provisions of the contract with the source of such programing will apply.

c. AFRTS outlets will use news analyses or commentaries provided by the AFRTS Programing Center only. Outlets will identify analyses or commentaries as such, distinguishing them from newscasts and straight news reporting.

d. The AFRTS Programing Center and AFRTS outlets' news policy is guided by the FCC's Fairness Doctrine. This doctrine requires that U.S. broadcast stations provide a significant cross section of opposing views on controversial issues. The Fairness Doctrine applies to issues rather than persons and does not require "equal opportunities." It does require U.S. broadcast stations to provide "reasonable opportunities" for the presentation of conflicting views on the important controversial public issues. All AFRTS news programing will be characterized by its fairness.

e. The AFRTS political broadcasting policy is based on the FCC's law of Political

Broadcasting and Cablecasting, which does require "equal opportunities" for political candidates. For example, a U.S. broadcast station may grant "equal opportunities" to a candidate to compensate for a speech or other appearance by a rival candidate. Accordingly, if an AFRTS outlet carries an original speech (or appearance), it is required to broadcast the answering response, which will also be made available from the AFRTS Programing Center. It is noted, however, the requirement for "equal opportunities" does not apply to four kinds of news programs: newscasts, news interviews, news documentaries, and spot coverage of news events. All AFRTS political programing will be characterized by its fairness.

f. The AFRTS Programing Center will provide a free flow of political programing from U.S. commercial and public networks. The Programing Center and AFRTS outlets will maintain the same "equal opportunities" balance offered by these sources. AFRTS outlets should make extensive use of such programing, especially during presidential election years, and should provide their audience with political analysis, commentary, and public affairs programs, in addition to political hard news.

g. AFRTS outlets may disseminate Service, major/local command, community, and host country news that is of special interest to DoD personnel and their dependents.

h. AFRTS outlets may routinely mention the name of a commercial sponsor, along with other pertinent facts, in news stories and local announcements concerning Armed Forces Professional Entertainment Programs.

i. The content, format, and presentation of local news programs will be carefully supervised to ensure that such programing is factual, fair, and unbiased, and is in compliance with all of the applicable provisions of this Directive. Equal care will be exercised in the selection of editors, newscasters, and supervisory personnel who direct and disseminate the news.

j. Locally produced newscasts will contain appropriate attribution at the beginning and end of each newscast. Normally, it is necessary to reattribute individual news items related to U.S. Government or DoD policies and operations. AFRTS outlets will not delete source attribution in news programs and materials provided by the AFRTS Programing Center.

k. To ensure complete and balanced news programing, AFRTS outlets have authority to contract for commercial news services, subject to normal budgeting and contracting procedures.

D. Interservice Support Agreements

1. When a proposed or existing AFRTS outlet serves personnel of more than one Military Service, an Interservice Support Agreement will be executed covering staffing, operations, support services, programing and internal information requirements. This agreement will be initiated by the responsible Military Service in accordance with DoD Directive 4000.19.[1] Normally this agreement is executed at the time establishment is requested. A copy of these Interservice Support Agreement will be provided to the appropriate Unified/Specified Command.

2. Budgeting and funding functions will be performed by the responsible Military Department. When a Military Department requests either a new service or an increase in present AFRTS service for an installation in another Military Department's geographical area of responsibility, the requester will fund the new service, reimbursing the geographical area manager for the balance of the current fiscal year, plus one additional fiscal year. Within this time frame, the geographical area manager will program and budget resources for the additional service. The pay, allowances (including subsistence), and permanent change of station expenses of military personnel permanently or temporarily assigned to assist in the management, operation, or engineering of the AFRTS outlet will be borne by the parent Military Department of those personnel. Where host-tenant support is provided by a command other than the one assigned control over the AFRTS outlet concerned, the requirement for reimbursement shall be determined in accordance with DoD Directive 4000.19.[1]

3. Military personnel authorizations for AFRTS outlets will be shared by the Military Services in proportion to the respective audience of each Service within the coverage area. For purposes of personnel authorizations, audience includes military, DoD civilians, and dependents. Where U.S. civilian personnel spaces are required, the proportionate share of these spaces and funds will be transferred to the operating Service from the other Services at the time of outlet establishment or transfer.

E. Television-Audio Support Activity (T-ASA) will:

1. Procure (based upon specified requirements and funds made available by the respective Military Departments), temporarily hold and issue, in accordance with DoD Instruction 4115.1,[1] nonstandard radio and television supplies and equipment requisitioned by AFRTS outlets. Minimum stocks (to include National Stock Numbers) of fast moving repetitive-demand type items, will be stocked to preclude the necessity for individual purchases for each requisition.

---

[1] See footnote to § 372a.1.

2. Process in-warranty and repair cycle float requirements for AFRTS outlets.

3. Review excess listings for feasibility of repair and redistribution to AFRTS outlets.

4. Provide engineering support for new and existing outlets when requested by other Military Departments. The requesting Service will be required to furnish travel and per diem funds.

5. Provide engineering expertise on the selection of replacement equipment to ensure maximum standardization.

6. Provide technical guidance on the maintenance and rehabilitation of existing AFRTS outlets.

7. Provide supervision and engineering expertise associated with the on-site survey, procurement, issuance and installation of nonstandard radio and television supplies and equipment upon request. The requesting Service will be required to furnish travel and per diem funds.

8. Conduct on-site maintenance advisory visits and provide on-the-job training as required/requested to AFRTS maintenance personnel.

9. Conduct on-site logistics advisory visits and provide supply procedure training as requested. Funding will be furnished by the requesting Service.

10. Provide Commodity Management for AFRTS outlets. This includes life cycle management for all systems, end items, repairables, consumables, and commercial technical literature in support of AFRTS outlets.

11. Develop, in coordination with the Military Departments and the Director, AFIS, specifications and standards for professional equipment for AFRTS outlets.

F. Telecommunications

1. Established military standards for long haul communications (strategic) are to be complied with when the use of Defense Communications System facilities is anticipated. This is necessary in order to provide appropriate interface and compatibility.

2. The ASD (C3I) is responsible for the coordination of AFRTS matters involving correspondence with the FCC and the National Telecommunications and Information Administration (NTIA).

3. Commanders will ensure required coordination, when applicable, with the Joint Frequency Panel of the U.S. Military Communications Electronics Board.

4. Early planning concepts, as well as requests for establishment of AFRTS facilities for broadcasting within the United States and possessions, will also be submitted through command channels to the ASD(C3I), who will effect necessary coordination with the NTIA and the FCC; and who will advise on consistency with national and departmental international telecommunications policy. The ASD(C3I) will advise the appropriate Military Department whether or not an application for frequency assignment may be processed to the NTA.

5. Frequency assignments will be obtained in accordance with established procedures and command responsibilities for frequency coordination and assignments.

G. Direct Communication

Direct communication is authorized between:

1. AFRTS outlets, Military Departments, Unified/Specified Commands, ASD(PA), and AFIS, concerning immediate operational matters only.

2. AFRTS outlets, Military Departments, and the T-ASA, Sacramento Army Depot, concerning routine supply matters, procurement actions, and technical engineering advice.

3. AFRTS outlets and the AFRTS Programing Center in Los Angeles on program matters such as new radio and television programs, program complaints, satellite transmissions, area program restrictions, and advisories on program sensitivities. Mini-TV outlets and Navy ships will channel such communications through the appropriate circuit manager to ensure proper coordination. All AFRTS outlets will channel communications concerning such matters as broadcast policy, or proposed changes in existing program services through the appropriate Military Department.

4. AFRTS outlets and host country commercial or government broadcasters, with the approval of the Director, AFIS. This direct link would be authorized for such local matters as lifting area program restrictions and the use of satellite broadcasters.

PART 373—INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

Sec.

373.1 Purpose.
373.2 Applicability and Scope.
373.3 Mission.
373.4 Organization and Management.
373.5 Responsibilities and Functions.
373.6 Relationships.
373.7 Authority.
373.8 Delegations of Authority.

AUTHORITY: Pub. L. 95-452 and 10 U.S.C., Chapter 4.

SOURCE: 48 FR 36247, Aug. 10, 1983, unless otherwise noted.

§ 373.1 Purpose.

This Part implements the provisions of Pub. L. 95-452, which establishes the position of Inspector General (IG) and the Office of the Inspector General (OIG) in the Department of Defense, and sets forth responsibilities, functions, authorities, and relationships as outlined below.

§ 373.2 Applicability and scope.

(a) This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organizations of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DoD Components").

(b) Its provisions cover all programs and operations administered or financed by the Department of Defense.

§ 373.3 Mission.

As an independent and objective office in the Department of Defense, the OIG shall:

(a) Conduct, supervise, monitor, and initiate audits and investigations relating to programs and operations of the Department of Defense.

(b) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations.

(c) Provide a means for keeping the Secretary of Defense and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

§ 373.4 Organization and management.

(a) The IG, a civilian appointed by the President, with the advice and consent of the Senate, shall serve as head of the OIG.

(b) The IG, in accordance with applicable laws and regulations governing the civil service, shall:

(1) Appoint a Deputy Inspector General, who shall serve as IG in his or her absence.

(2) Appoint an Assistant Inspector General for Auditing who shall supervise the performance of auditing activities relating to programs and operations of the Department of Defense.

(3) Appoint an Assistant Inspector General for Investigations who shall supervise the performance of investigative activities relating to programs and operations of the Department of Defense.

(4) Select, appoint, and employ such other officers and employees as may be necessary to carry out the mission, functions, responsibilities, and authorities assigned herein.

(c) The OIG shall consist of organizational elements established by the IG within the resources assigned by the Secretary of Defense or by statute.

(d) The Secretaries of the Military Departments or their designees shall assign military personnel to the OIG in accordance with approved authorizations and established procedures for assignments to joint duty.

(e) The Secretary of Defense shall provide the OIG with appropriate and adequate office space at central and field office locations together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the OIG, and shall provide necessary maintenance services for offices and equipment and facilities located therein.

§ 373.5 Responsibilities and functions.

(a) The *Inspector General, Department of Defense*, shall:

(1) Be the principal adviser to the Secretary of Defense on all audit and criminal investigative matters covered under Pub. L. 95-452 and for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department of Defense.

(2) Initiate, conduct, and supervise such audits and investigations in the Department of Defense, including the Military Departments, as the IG considers appropriate.

(3) Provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness.

(4) Evaluate and review the work of all DoD activities relating to contract audit, internal audit, internal review, military exchange audit, and independent public accountant audit service programs.

(5) Investigate fraud, waste, and abuse uncovered as a result of contract and internal audits, as the IG considers appropriate.

(6) Develop policy, monitor and evaluate program performance, and provide guidance with respect to all DoD activities relating to criminal investigation programs.

(7) Monitor and evaluate the adherence of DoD auditors to internal audit, contract audit, and internal review principles, policies, and procedures.

(8) Develop policy, evaluate program performance, and monitor actions taken by all DoD Components in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States.

(9) Monitor and give particular regard to the activities of the internal audit, inspection, and investigative units of DoD Components (including those of the Military Departments) with a view toward avoiding duplication and insuring effective coverage, coordination, and cooperation.

(10) Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to DoD programs and operations.

(11) Review existing and proposed legislation and regulations relating to DoD programs and operations and make recommendations thereon in accordance with Section 4(a)(2) of Pub. L. 95-452 concerning their impact on economy and efficiency or on the prevention and detection of fraud and abuse in DoD programs and operations.

(12) Recommend policies for and conduct, supervise, or coordinate other activities carried out or financed by the Department of Defense for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

(13) Recommend policies for and conduct, supervise, or coordinate relationships between the Department of Defense and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (i) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department of Defense; or (ii) the identification and prosecution of participants in such fraud or abuse.

(14) Keep the Secretary of Defense and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department of Defense, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.

(15) Receive and investigate, consistent with Section 7 of Pub. L. 95-452 and DoD Directive 7050.1 complaints or information concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, or abuse of authority, or a substantial and specific danger to the public health and safety involving the Department of Defense.

(16) Organize, direct, and manage the OIG and all resources assigned thereto.

(17) Perform other duties as assigned by the Secretary of Defense.

(b) The *Secretaries of the Military Departments* shall maintain authority, direction, and operational control over their audit, inspection, and investigative organizations, including responsibility for their effectiveness and the scope of their activities.

(c) The *Assistant Secretary of Defense (Comptroller)* shall maintain authority, direction, and operational control over the Defense Contract Audit Agency including responsibility for the effectiveness and scope of the Agency's activities.

§ 373.6 Relationships.

(a) The IG shall carry out the above responsibilities and functions under the general supervision of the Secretary of Defense and shall not be prevented or prohibited from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation; except that the IG shall be subject to the authority, direction, and control of the Secretary with respect to audits, investigations, or the issuances of subpoenas that require access to information concerning:

(1) Sensitive operational plans.

(2) Intelligence matters.

(3) Counterintelligence matters.

(4) Ongoing criminal investigations by other administrative units of the Department of Defense related to national security.

(5) Other matters the disclosure of which would constitute a serious threat to national security.

(b) If the Secretary of Defense exercises the authority to restrict IG access under § 373.6(a) above, the IG shall submit a statement concerning such exercise within 30 days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In the performance of assigned responsibilities and functions, the IG shall:

(1) Coordinate actions, as he or she deems appropriate, with other DoD Components and, unless precluded by the nature of the matter, notify the Secretaries of the Military Departments concerned before conducting audits or investigations of matters normally under the jurisdiction of the Military Departments.

(2) Give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(3) Coordinate, as appropriate, with the Under Secretary of Defense for Policy and the Assistant to the Secretary of Defense (Intelligence Oversight) on matters relating to their respective areas of responsibility.

(4) Report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.

(5) Report expeditiously to the Military Department Secretary concerned any suspected or alleged violations of the Uniform Code of Military Justice.

§ 373.7 Authority.

In addition to the authorities delegated in Pub. L. 95-452, the IG is hereby delegated authority to:

(a) Issue DoD instructions, DoD publications, and one-time, directive-type memoranda, consistent with DoD 5025.1-M that implement policies approved by the Secretary of Defense in assigned areas of responsibility. Instructions shall be issued directly to elements of the OSD and the Defense Agencies. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to the Unified and Specified Commands shall be issued through the JCS.

(b) Have access to all records, reports, investigations, audits, reviews, documents, papers, recommendations, or other material available to any DoD Component. These normally shall be obtained consistent with DoD Directive 5000.19.

(1) Except as specifically denied in writing by the Secretary of Defense pursuant to the authority contained in Section 8 of Pub. L. 95-452 and § 373.6(a), above, no officer, employee, or service member of any DoD Component may deny the IG, or officials assigned by the IG, access to information, or prevent them from conducting an audit or investigation.

(2) IG officials shall possess proper access security clearance when sensitive classified data are requested.

(c) Communicate directly with personnel of other DoD Components on matters related to Pub. L. 95-452 and this Part. To the extent practicable and consistent with the responsibilities and functions of the Military Departments as described in § 373.5(b), above, the head of the DoD Component concerned shall be kept informed of such direct communications.

(d) Request assistance as needed from other audit, inspection, and investigative units of DoD Components. In such cases, assistance shall be requested through the head of the DoD Component concerned.

(e) Request information or assistance from any Federal, State, or local governmental agency, or unit thereof.

(f) Exercise the administrative authorities contained in § 373.8.

§ 373.8 Delegations of Authority.

Pursuant to the authority vested in the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Inspector General (IG) of the Department of Defense or, in the absence of the IG, the person acting for him or her, is hereby delegated authority, as required in the administration and operation of the Office of the Inspector General (OIG) to:

(a) Fix rates of pay for wage board employees exempted from Title 5, United States Code, Section 5102(c)(7), on the basis of rates established under the Coordinated Federal Wage System. In fixing those rates, the wage schedules established by DoD wage-fixing authority shall be followed.

(b) Establish advisory committees and employ part-time advisors for the performance of OIG functions pursuant to Title 10, United States Code, Section 173(a).

(c) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with Title 5, United States Code, Section 2903(b), and designate in writing other officers and employees of the OIG to perform this function. Administer oaths as provided by Title 5, United States Code, Section 303.

(d) Establish an OIG Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of OIG civilian employees whose suggestions, inventions, or superior acts or service benefit or affect the OIG or its subordinate activities in accordance with Title 5, United States Code, Section 4503, and Office of Personnel Management (OPM) regulations.

(e) Perform the following functions in accordance with the provisions of Title 5, United States Code, Section 7532; Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953; and DoD 5200.2-R, "DoD Personnel Security Program," December 20, 1979:

(1) Designate any position in the OIG as a "sensitive" position.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the OIG for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not the termination, of the services of an OIG employee in the interest of national security.

(f) Clear OIG personnel and other individuals, as appropriate, for access to classified DoD material and information in accordance with the provisions of DoD 5200.2-R and Executive Orders 10450 and 12356, "National Security Information," April 2, 1982.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 24, Section 3401, of the Internal Revenue Code of 1954 and, as such agent, make all determinations and certifications required or provided under Title 26, United States Code, Section 3122, and Title 42, United States Code, Section 405(p) (1) and (2), with respect to OIG employees.

(h) Authorize and approve overtime work for OIG civilian personnel in accordance with Title 5, United States Code, Subchapter V, Chapter 55, and Section 550.11 of the OPM regulations.

(i) Authorize and approve:

(1) Travel for OIG civilian personnel in accordance with Volume 2, Department of Defense Civilian Personnel, Joint Travel Regulations.

(2) Temporary duty travel only for military personnel assigned to or detailed to the OIG in accordance with Volume 1, Joint Travel Regulations.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to or in connection with OIG activities, pursuant to Title 5, United States Code, Section 5703, and Part A, Chap-

ter 6, Volume 2, Joint Travel Regulations.

(j) Approve the expenditure of funds available for travel by military personnel assigned or detailed to the OIG for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (Title 37, United States Code, Section 412). This authority cannot be redelegated.

(k) Develop, establish, and maintain an active and continuing Records Management Program under DoD Directive 5015.2, "Records Management Program," September 17, 1980; and Parts 286 and 286a of this title.

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for the OIG when it is determined more advantageous and consistent with the best interests of the government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973, and the Joint Regulation of the General Services Administration/Treasury Department/General Accounting Office, "For Small Purchases Utilizing Imprest Funds."

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the OIG (Title 44, United States Code, Section 3702).

(n) Establish and maintain appropriate property accounts for the OIG and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for OIG property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Issue the necessary security regulations for the protection of property and places under the jurisdiction of the IG, under DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, consistent with DoD 5025-1M, "Department of Defense Directives System Procedures," April 1981.

(q) Enter into support and service agreements with the Military Departments, other DoD Components, or other government agencies as required for the effective performance of responsibilities and functions assigned to the OIG.

(r) Authorize OIG personnel to carry firearms in accordance with DoD Directive 5210.66, "Carrying of Firearms by Department of Defense Personnel," May 31, 1979.

(s) Exercise original Top Secret classification authority.

(t) Issue credentials and other identification to employees of the OIG.

(u) The Inspector General may redelegate these authorities, in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

PART 375—ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

Sec.

375.1 Reissuance and purpose.
375.2 Definition.
375.3 Responsibilities.
375.4 Functions.
375.5 Relationships.
375.6 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 47 FR 32111, July 26, 1982, unless otherwise noted.

§ 375.1 Reissuance and purpose.

This part establishes, pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, U.S.C., Section 36, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Public Affairs) (ASD(PA)), with responsibilities, functions, and authorities as prescribed herein.

§ 375.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the United and Specified Commands, and the Defense Agencies.

§ 375.3 Responsibilities.

The *Assistant Secretary of Defense (Public Affairs)* shall:

(a) Serve as principal staff advisor and assistant to the Secretary of Defense for DoD public information, internal information, Freedom of Information, mandatory declassification review, clearance of DoD information for public release, community relations, information training, and audiovisual matters.

(b) Ensure a free flow of news and information to the media, appropriate forums, and the American people limited only by national security constraints and statutory mandates.

§ 375.4 Functions.

The ASD(PA) shall:

(a) For each of the areas of responsibility cited in paragraph 3 of this section.

(1) Develop policies, plans, and programs in support of DoD objectives and operations.

(2) Monitor, evaluate, and develop systems, standards, and procedures for the administration and management of approved policies, plans, and programs.

(3) Issue policy guidance to DoD Components.

(4) As required, participate with the Assistant Secretary of Defense (Comptroller) in planning, programing, and budgeting activities.

(5) Promote coordination, cooperation, and mutual understanding among DoD Components and with other federal, state, and local agencies and the civilian community.

(6) Serve on boards, committees, and other groups, and represent the Secretary of Defense outside of the Department of Defense.

(b) Conduct security reviews, consistent with Executive Order 12356 and DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982, of all material prepared for public release and publication originated by the Department of Defense (including testimony before Congressional committees), or by its contractors, DoD employees as individuals, and material submitted by sources outside the Department of Defense for such review.

(c) Review for conflict with established DoD and national security policies or programs, official speeches, news releases, photographs, films, and other information originated within the Department of Defense for public release, or similar material submitted for review by other executive agencies of the U.S. Government.

(d) Oversee the provision of news analysis and news clipping services for the OSD, OJCS, and the Military Departments headquarters.

(e) Evaluate and approve:

(1) Requests for DoD cooperation in programs involving relations with the public consistent with 32 CFR Parts 237 and 238.

(2) Requests for travel in military carriers, for public affairs purposes, by news media representatives or other non-DoD personnel.

(f) Direct and administer the DoD Freedom of Information Act Program consistent with 32 CFR Part 286.

(g) Exercise program and resource management control of American Forces Radio and Television activities through the American Forces Information Service consistent with 32 CFR Part 372.

(h) Evaluate and coordinate the DoD response to requests for speakers received by the Department of Defense and, as required, assist in scheduling, programing, and drafting speeches for the participation of qualified personnel.

(i) Provide policy guidance regarding information training to the Defense Information School consistent with DoD Directive 5160.48, "Department of Defense Information Training," February 21, 1964.

(j) Exercise overall policy development and management responsibilities for DoD audiovisual activities consistent with DoD Directive 5040.2, "Audiovisual Activities," July 23, 1979.

(k) Administer the Freedom of Information Act Program and the access portion of the Privacy Act Program for the OSD, OJCS, and other DoD Components as may be assigned.

(l) Direct and administer the mandatory declassification review program for the OSD, OJCS, and other DoD Components as may be assigned.

(m) Exercise direction, authority, and control over the Defense Audiovisual Agency and the American Forces Information Service consistent with 32 CFR Parts 205 and 372.

(n) Perform such other functions as the Secretary of Defense may assign.

§ 375.5 Relationships.

(a) In the performance of assigned duties the ASD(PA) shall:

(1) Coordinate and exchange information with DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies to avoid duplication and achieve maximum efficiency and economy.

(3) Maintain liaison with and provide assistance to the general public, representatives of the news media, and private organizations seeking information relating to the activities of the Department of Defense.

(b) Heads of DoD Components shall coordinate with the ASD(PA) on all matters related to the functions cited in paragraph 4 of this section.

§ 375.6 Authorities.

The ASD(PA) is hereby delegated authority to:

(a) Issue DoD Instructions and one-time directive-type memoranda, consistent with DoD Directive 5025.1, "DoD Directives System," October 16, 1980, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands regarding public affairs matters shall be issued directly to the commanders of the Unified and Specified Commands. Instructions which have operational implications shall be coordinated with the Joint Chiefs of Staff, consistent with DoD Directive 5105.35, "Responsibilities of Unified and Specified Commands in Public Affairs Matters," May 7, 1965.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary.

(c) Communicate directly with DoD Components. The channel of communications with the Unified and Specified Commands regarding public affairs matters shall be between the ASD(PA) and the Commanders of the Unified and Specified commands. Communications which have operational implications shall be coordinated with the Joint Chiefs of Staff consistent with DoD Directive 5105.35.

(d) Communicate with other government agencies, representatives of the legislative branch, and members of the public.

(e) Establish arrangements for DoD participation in those non-DoD government programs for which the ASD(PA) has been assigned primary staff cognizance.

(f) Act as the sole agent at the Seat of Government for the release of official DoD information for dissemination through any form of public information media.

(g) Establish accreditation criteria and serve as the approving and issuing authority for credentials for news gathering media representatives traveling in connection with coverage of official DoD activities.

(h) Approve military participation in public exhibitions, demonstrations, and ceremonies of national or international significance.

(i) Declassify official information submitted for security review, mandatory declassification review, and Freedom of Information appellate actions and those over which the Department of Defense exercises final classification jurisdiction.

PART 376—JOINT TACTICAL COMMAND, CONTROL, AND COMMUNICATIONS AGENCY (JTC^{3}A)

Sec.
376.1 Purpose.
376.2 Applicability.
376.3 Definitions.
376.4 Mission.
376.5 Organization and management.
376.6 Responsibilities and functions.
376.7 Relationships.
376.8 Authorities.
376.9 Administration.

AUTHORITY: 10 U.S.C. section 125.

SOURCE: 49 FR 30463, July 31, 1984, unless otherwise noted.

§ 376.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense and the provisions of 10 U.S.C., section 125, this Part establishes the Joint Tactical Command, Control, and Communications Agency (JTC^{3}A) with responsibilities, functions, relationships, and authorities as outlined below.

§ 376.2 Applicability.

This Part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 376.3 Definitions.

(a) *The Joint Tactical Command, Control, and Communications (JTC^3) Architecture.* The aggregate of documented elements of a JTC^3 program that define and guide the planning, programing, development, testing, evaluation, implementation, and configuration management of entities that compose the program. The JTC^3 architecture accomplishes the following:

(1) Describes the overall concept for tactical command, control, and communications and nonstrategic nuclear forces C^3 in joint and combined operations based upon the threat projections and force requirements approved by the Joint Chiefs of Staff.

(2) Identifies the characteristics of tactical C^3 systems supporting joint and combined operations necessary to meet the following validated requirements:

(i) Operational and system performance requirements.

(ii) Interconnectivity requirements.

(iii) Secure communications requirements.

(3) Documents the technical and procedural interface standards required to achieve systems compatibility and interoperability.

(4) Documents the procurement and fielding schedules needed to meet implementation objectives.

(5) When approved, serves as authoritative guidance for Master Program Plans of the DoD Components and for preparation of Program Objective Memorandums.

(b) *Technical Interface Standards.* Consist of specifications of the functional, electrical, and physical characteristics necessary to allow the exchange of information across an interface between different tactical C^3 systems or equipment.

(c) *Procedural Interface Standards.* Consist of specifications for the manner of accomplishing the exchange of information across an interface. They define:

(1) The form or format in which information is to be exchanged.

(2) The prescribed information exchange language, syntax, and vocabulary to be used in the information exchange.

(3) Interface operating procedures that govern the information exchange.

(d) *Tactical/Mobile C^3 Systems* Those deployable C^3 systems that support tactical operations.

(e) *Joint C^3 Systems.* C^3 systems that interoperate with systems of other Military Services or other nations in joint or combined operations.

§ 376.4 Mission.

The JTC^{3}A shall ensure the interoperability of tactical command, control, and communications (C^3) systems for joint or combined operations (in-

BEST COPY AVAILABLE

cluding nonstrategic nuclear forces) through the development and maintenance of a joint architecture, interface standards, and interface definitions for tactical/mobile C^3 systems.

§ 376.5 Organization and management.

(a) The JTC^{3}A shall consist of a Director and subordinate organizational elements that are established by the Director within assigned resources.

(b) The Director, JTC^{3}A, shall report to the Secretary of Defense through the Under Secretary of Defense for Research and Engineering (USDR&E) for all matters relating to systems engineering and acquisition. The Joint Chiefs of Staff (JCS) shall provide guidance and direction for matters involving planning, requirements development and integration, prioritization, and operational concepts, policies, and procedures.

§ 376.6 Responsibilities and functions.

(a) The *Under Secretary of Defense for Research and Engineering* shall:

(1) Coordinate and recommend to the Secretary of Defense a program and budget for the JTC^{3}A.

(2) Assign specific tasks to the JTC^{3}A for matters relating to development and acquisition management, including system engineering, design, and development, for joint tactical/mobile C^3 systems.

(3) Review and make recommendations regarding implementation of the overall joint tactical C^3 architecture, interface standards, and interface definitions developed by the JTC^{3}A and submitted to the Secretary of Defense by the JCS.

(4) Approve Military Service development plans and make recommendations on related programing documents for tactical and nonstrategic nuclear forces C^3 programs that require interoperation across joint or combined boundaries.

(5) Ensure compliance of DoD Components with the approval of tactical command, control, and communications architecture.

(b) The *Under Secretary of Defense for Policy* (USD(P)) shall provide policy guidance for JTC^{3}A activities except operational policy guidance, which will be provided by the JCS.

(c) The *Joint Chiefs of Staff* shall:

(1) Provide guidance and direction to the JTC^{3}A for operational matters involving planning and requirements development and integration, including prioritization, operational concepts, policies, and procedures.

(2) Establish and validate joint or combined tactical C^3 requirements applicable to JTC^{3}A programs.

(3) Review and provide recommendations to the Secretary of Defense concerning development plans and related programing documents for tactical C^3 programs that require interoperation across joint or combined boundaries, to assist in determining their adequacy, feasibility, and suitability in support of joint doctrine, assigned operational missions, and contingency plans.

(4) Review for implementation the overall joint tactical C^3 architecture, interface standards, and interface definitions developed by the JTC^{3}A and provide these to the Secretary of Defense for approval.

(5) Approve military manpower for the JTC^{3}A, in accordance with JCS Memorandum of Policy (MOP) 173, "Manpower for Joint and International Activities," May 7, 1981.

(6) Provide guidance and direction for JTC^{3}A configuration management activities.

(7) Ensure compliance of DoD Components with the approved tactical command, control, and communications architecture.

(d) The *Commanders of Unified and Specified Commands* shall:

(1) Identify their tactical C^3 requirements (including secure communications requirements) for joint or combined operations, as they occur, for JCS comment and validation.

(2) Conduct or participate in exercises and technical tests to evaluate joint or combined tactical C^3 systems, procedures, and standards.

(e) The *Secretaries of the Military Departments* shall:

(1) Identify their tactical C^3 requirements (including secure communications requirements) for joint or combined operations, as they occur, to the JCS.

(2) Provide to the Director, JTC^{3}A, proposed changes that impact on con-

figuration, schedules, or applicable system or interface specifications of the tactical C^3 systems architecture.

(3) Manage the configuration control of equipment under their purview.

(4) Designate for each Military Service a single office with responsibility for all its JTC^{3}A matters.

(5) Plan, program, and budget for the implementation of the approved joint tactical C^3 architecture.

(6) Advise the JCS and the Director, JTC^{3}A, of changes of funds, personnel, facilities, or materials that would affect the development or implementation of the approved JTC^3 architecture or their participation in that architecture.

(7) Undertake tasks assigned by the USDR&E in support of the JTC^{3}A.

(8) Provide military personnel for assignment to the JTC^{3}A in accordance with the JCS-approved Joint Manpower Program, processed under the provisions of JCS MOP 173.

(f) The *Director, National Security Agency/Chief, Central Security Service (NSA/CSS)* shall:

(1) Provide communications security (COMSEC) input and advise on the development of joint and combined architectures, design standards, and interface definitions, and coordinating such actions.

(2) Develop COMSEC architectures complementary to these of the JTC^{3}A.

(3) Assess the security provided by proposed tactical C^3 architectures.

(g) The *Director, Joint Tactical Command, Control, and Communications Agency* shall:

(1) Provide the USDR&E with engineering support for joint tactical/mobile C^3 system design and development.

(2) Develop and maintain a joint tactical C^3 architecture by defining the architecture for joint tactical communications systems (including nonstrategic nuclear forces C^3) and by defining interface specifications required to ensure interoperability and information flow among C^3 systems in accordance with the guidance and direction provided by the JCS and the USDR&E.

(3) Develop, test, and maintain technical and procedural interface standards to be used by tactical C^3 systems in joint or combined military operations, in accordance with guidance provided by the JCS and the USDR&E, and verify that such systems have implemented properly the approved interface standards.

(4) Advise the USDR&E, the USD(P), and the JCS on joint tactical C^3 matters.

(5) Monitor and coordinate programs for which JTC^{3}A has responsibility but which are included in the programs of other DoD Components and governmental agencies, and monitor other programs that may affect tactical C^3 interoperability.

(6) Provide source documents from which the DoD Components can develop training materials to facilitate implementation of the tactical C^3 architecture.

(7) Develop and maintain data bases of developmental and operational interoperability standards.

(8) Coordinate secure communications interoperability requirements with the NSA/CSS, the Defense Communications Agency (DCA), the Defense Intelligence Agency (DIA), the Military Departments, and the JCS.

(9) In coordination with NSA/CSS and the Military Departments, and in accordance with DoD Directive C-5200.5, develop a tactical secure communications architecture as an integral part of the overall joint architecture, including orderly and timely introduction of systems to satisfy interoperability requirements.

(10) Develop and maintain tactical communications system technical standards under the Defense Standardization and Specification Program (DoD Directive 4120.3) in coordination with the Military Departments and appropriate Defense Agencies, as assigned and directed.

(11) Develop, in coordination with appropriate governmental activities, U.S. positions on combined tactical C^3 interoperability matters. Represent the United States as designated by the USDR&E or JCS, as appropriate, in international forums responsible for the development, testing, and maintenance of technical and procedural interface standards for use by tactical C^3 systems in combined operations. Provide direct technical support, as as-

signed or directed by the USDR&E or JCS, as appropriate, to allied tactical C^3 interoperability forums and to U.S. representatives to these forums.

(12) Perform financial management functions relating to JTC^{3}A-funded programs and assist in reviews by the Secretary of Defense and JCS of programs and budgets supporting the JTC^{3}A mission.

(13) Monitor the Commander-in-Chief (CINC) C^2 Initiative Program for possible effects on the JTC^3 architecture.

(14) Perform, in coordination with the DCA, system planning functions for current and future tactical satellite communications terminals, such as the Ground Mobile Forces equipment.

(15) Support the USD(P) and the JCS in evaluating and commenting on proposals, required operational capabilities (ROCs), and developments within the scope of the JTC^{3}A mission.

(16) Recommend to the USDR&E and the Military Departments, those research, development, test, and evaluation (RDT&E) programs or projects required to accomplish the JTC^{3}A mission.

§ 376.7 Relationships.

(a) For the performance of assigned functions, the Director, JTC^{3}A, shall:

(1) Coordinate with other DoD Components having collateral or related functions and responsibilities.

(2) Maintain active liaison with other DoD Components for the exchange of information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other government agencies whenever practical to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, JTC^{3}A, on all matters related to the mission, responsibilities, and functions of JTC^{3}A.

§ 376.8 Authorities.

The Director, JTC^{3}A, or designee, is specifically delegated authority to:

(a) Command the JTC^{3}A.

(b) Establish JTC^{3}A headquarters and field organizations and, within overall authorized personnel ceiling, allocate military and civilian spaces among such organizations in accordance with established DoD policies.

(c) Develop, defend, and administer a budget for the JTC^{3}A in accordance with established DoD Five Year Defense Program (FYDP) and Planning, Programing, and Budgeting System (PPBS) policies and procedures (DoD Instruction 7045.8, DoD Directive 7045.14, and DoD Instruction 7045.7).

(d) Communicate directly with appropriate personnel of other DoD Components on matters related to the mission and programs of the JTC^{3}A.

(e) Prescribe, in accordance with this Part and in coordination with the DoD Components concerned, procedures, principles, standards, and practices to accomplish the assigned mission.

(f) Monitor and report to the Secretary of Defense and the JCS compliance by the DoD Components with the approved tactical C^3 architecture.

(g) Obtain plans, reports, information, advice, and assistance from other DoD Components, consistent with the policies and criteria of DoD Directive 5000.19, as necessary, to carry out assigned functions and responsibilities.

§ 376.9 Administration.

(a) The Director, JTC^{3}A, shall be a commissioned officer in the grade of O-7 or above appointed by the Secretary of Defense from nominees submitted by the Military Departments through the JCS.

(b) The assignment of other military and civilian personnel to the JTC^{3}A shall be subject to the approval of the Director, JTC^{3}A.

(c) The JTC^{3}A shall be authorized such personnel, facilities, funds, and other administrative support as considered necessary by the Secretary of Defense. JTC^{3}A shall develop and submit a Joint Manpower Program in accordance with JCS MOP 173.

(d) Administrative support required by JTC^{3}A shall be provided by the Secretary of the Army on a reimbursable basis in accordance with DoD Directive 4000.19, except that the JTC^{3}A will retain separate authority for budget preparation, justification, execution, and other DoD FYDP and PPBS activities.

(e) The Heads of other DoD Components shall provide supplementary support to the JTC³A as may be required under DoD Instruction 7045.8 and within the constraints of available resources.

PART 378—ASSISTANT TO THE SECRETARY OF DEFENSE (INTELLIGENCE OVERSIGHT)

Sec.
378.1 Purpose.
378.2 Applicability.
378.3 Definitions.
378.4 Responsibilities and functions.
378.5 Authorities.
378.6 Administration.

AUTHORITY: 10 U.S.C. 133(d).

SOURCE: 48 FR 19166, Apr. 28, 1983, unless otherwise noted.

§ 378.1 Purpose.

This part replaces DoD Directive 5100.82, which established the position of Inspector General for Intelligence in the Office of the Secretary of Defense under the authority of Title 10, U.S.C. 133(d). That official hereafter shall carry the title of Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)), with responsibilities, functions, and authorities as provided herein.

§ 378.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 378.3 Definitions.

Terms applicable to this part are defined in E.O. 12333, DoD Directive 5240.1, and DoD 5240.1-R.

§ 378.4 Responsibilities and functions.

Under the direction, authority, and control of the Secretary of Defense, the ATSD(IO) shall be responsible for the independent oversight of all intelligence activities in the Department of Defense. In this capacity, the ATSD(IO) shall ensure that all intelligence activities are conducted in compliance with federal law and other laws as appropriate; Executive Orders and Presidential directives; and DoD policy directives. The term "propriety" hereinafter relates to the standards for intelligence activities promulgated in the documents cited above. In the execution of this responsibility, the ATSD(IO) shall perform the following functions:

(a) Review, in consultation with the General Counsel, DoD, all allegations that raise questions of legality or propriety of intelligence activities in the Department of Defense.

(b) Conduct investigations of intelligence activities that raise questions of legality or propriety.

(c) Conduct vigorous and independent inspections of DoD Components that engage in intelligence activities for the purpose of verifying that personnel are familiar and in compliance with E.O. 12333 and its DoD implementing documents.

(d) Monitor investigations and inspections by DoD Components related to intelligence activities, evaluate the findings, and, if appropriate, submit recommendations for corrective action to the Deputy Secretary of Defense.

(e) In consultation with the General Counsel, DoD, report at least quarterly to the Deputy Secretary of Defense and the President's Intelligence Oversight Board, established under E.O. 12334:

(1) Any significant oversight activities undertaken; and

(2) Any DoD intelligence activities of questionable legality or propriety, the investigative action thereon, an evaluation of completed investigations, and the action taken on completed investigations.

(f) Participate as a member of the Defense Counterintelligence Board (DoD Directive 5240.2).

(g) Coordinate, as appropriate, with the DoD Inspector General (DoD IG) on matters relating to the DoD IG's area of responsibility in accordance with Pub. L. 95-452.

(h) Perform such other functions as the Secretary of Defense may assign.

§ 378.5 Authorities.

In the exercise and performance of assigned responsibilities and functions described in § 378.4 of this part, the ATSD(IO), or designee, is hereby delegated authority to:

(a) Deal directly with the head of the element inspected or investigated, conduct interviews, take depositions, and examine records, as required.

(b) Have complete and unrestricted access to any and all available intelligence-related information, regardless of classification or compartmentation, from all DoD Components and personnel, as required. This includes specifically the authority (1) to require an Inspector General or other cognizant investigative official of a DoD Component to report allegations of improprieties or illegalities of intelligence activities by or within a DoD Component and (2) to obtain information on the status, proceedings, and findings or to obtain copies of reports of investigations or inspections of such allegations.

(c) Obtain such temporary assistance as may be required from other DoD Components, including personnel, facilities, and other services, for the conduct of inspections or investigations. Requests for personnel augmentation shall be made in accordance with established procedures.

(d) Communicate directly with the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Directors of the Defense Agencies, the Inspectors General, or other investigative officials having cognizance over DoD Components, and the Commanders of the Unified and Specified Commands, after notifying the Joint Chiefs of Staff.

(e) Communicate directly with the President's Intelligence Oversight Board, the Director of Central Intelligence, and all other government agencies participating in interdepartmental programs for which the ATSD(IO) has been assigned primary cognizance.

§ 378.6 Administration.

The ATSD(IO) shall report directly to the Deputy Secretary of Defense.

PART 379—ASSISTANT SECRETARY OF DEFENSE (RESERVE AFFAIRS)

Sec.

379.1 Purpose.
379.2 Definitions.
379.3 Responsibilities.
379.4 Functions.
379.5 Relationships.
379.6 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 49 FR 9567, Mar. 14, 1984, unless otherwise noted.

§ 379.1 Purpose.

This Part:

(a) Cancels DoD Directive 5120.40.

(b) Implements section 136(b)(4) of title 10, United States Code, which establishes the position of Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

(c) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(RA), pursuant to the authority vested in the Secretary of Defense under title 10, United States Code.

§ 379.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

(b) *Reserve Components.* Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "reserve components."

(c) *Total Force.* As used in this Directive, refers to the totality of organiations, units, and personnel (military and civilian) in both active and reserve components of the Department of Defense.

§ 379.3 Responsibilities.

The *Assistant Secretary of Defense (Reserve Affairs)* shall serve as the Pricipal Staff Assistant and advisor to the Secretary of Defense with specific re-

BEST COPY AVAILABLE

sponsibility for exercising overall supervision of reserve component matters in the Department of Defense. In this capacity, the ASD(RA) shall:

(a) Analyze and develop policies, provide advice and make recommendations to the Secretary of Defense, and issue guidance to DoD Components on matters pertaining to the reserve components.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Promulgate plans, programs, actions, and taskings pertaining to the reserve components and consistent with national security objectives and DoD policies to promote the effective integration of reserve component capabilities into a choesive Total Force of both active and reserve component units and personnel.

(d) Review and evaluate programs of DoD Components that impact on the reserve components; conduct studies and analyses; monitor the activities of reserve component organizations, training facilities, and associations; and undertake other management oversight activities as may be required to ensure that policies, plans, programs, and actions pertaining to the reserve components:

(1) Adhere to approved DoD policies and standards.

(2) Are compatible with and support Total Force objectives and requirements

(3) Enhance the readiness and capabilities of reserve component units and personnel.

(4) Promote the intergration of reserve components with active duty forces.

(5) Make the most effective use of reserve components within the Total Force.

(e) Participate in planning, programing, and budgeting activities related to ASD(RA) functions and responsibilites, including the review, analysis, and development of recommendations concerning program and budget submissions and the Five-Year Defense Program.

(f) Promote, with respect to the reserve components, coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies, state and local governments, the civilian community at large, and the families and employers of reserve component personnel.

(g) Serve on boards, committees, and other groups to ensure that reserve component issues and impacts are represented and represent the Secretary of Defense on reserve affairs matters outside the Department of Defense.

(h) Develop, coordinate, monitor, and review legislation, in coordination with the Assistant Secretary of Defense (Legislative Affairs).

(i) Execute such other related responsibilities as the Secretary of Defense may prescribe.

§ 379.4 Functions.

The ASD(RA) shall carry out the responsibilities described in § 379.3, above, for the following functional areas for the reserve components:

(a) Manpower.

(b) Personnel and compensation.

(c) Research, studies, and evaluation.

(d) Operations, training, and force structure.

(e) Mobilization, demobilization, and reconstitution.

(f) Force mix.

(g) Weapons systems, equipment, and materiel.

(h) Construction, installations, and facilities.

(i) Readiness and sustainability.

§ 379.5 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(RA) shall:

(1) Coordinate and exchange information with officials of DOD Components having functional responsibilities for Total Force policies and programs and with other officials in the Department of Defense exercising collateral or related functions.

(2) Provide administrative staff support to the Reserve Forces Policy Board (RFPB) and coordinate issues and positions with the RFPB (Pub. L. 90-168).

(3) Exercise direction, authority, and control over the National Committee for Employer Support of the Guard and Reserve.

(4) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DOD Components shall coordinate with the ASD(RA) on all matters related to the functions cited in § 379.4, above, or that otherwise impact on the reserve components.

§ 379.6 Authorities.

The ASD(RA) is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1-M, that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(RA). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to the Unified and Specified Commands shall be issued through the JCS.

(b) Act for the Secretary of Defense, in accordance with section 502(b) of Pub. L. 97-86 and future authorization acts that contain this provision, to increase the authorized end strength for reserve personnel on active duty in support of the reserve program by up to 2 percent of the prescribed end strength, or such other percentage as shall be authorized by statute, when the increase is in the national interest.

(c) Obtain reports, information, advice, and assistance, consistent with DOD Directive 5000.19, as necessary, in carrying out assigned functions and maintain requisite data base, management information, and decision support systems.

(d) Communicate directly with the heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(e) Establish arrangements for DOD participation in nondefense governmental programs for which the ASD(RA) is assigned primary DOD cognizance.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions and responsibilities.

(g) Establish and maintain liaison with ministry of defense officials dealing with reserve component matters in allied nations.

PART 380—DIRECTOR OF OPERATIONAL TEST AND EVALUATION

Sec.

380.1 Purpose.
380.2 Definitions.
380.3 Policy.
380.4 Responsibilities.
380.5 Functions.
380.6 Relationships.
380.7 Authorities.

AUTHORITY: 10 U.S.C. 136.

SOURCE: 49 FR 17937, Apr. 26, 1984, unless otherwise noted.

§ 380.1 Purpose.

This part: (a) Implements section 136a of title 10, U.S.C. which establishes the position of Director of Operational Test and Evaluation (Director, OT&E).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Director, OT&E, pursuant to the authority vested in the Secretary of Defense under title 10, U.S.C.

§ 380.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies. The term "Military Services" as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) *Independent Test Agency.* The Army Operational Test and Evaluation Agency, the Navy Operational Test and Evaluation Force, the Air Force Operational Test and Evalua-

BEST COPY AVAILABLE

tion Command, and the Marine Corps Operational Test and Evaluation Agency.

(c) *Low Rate Initial Production (LRIP)*. The production of a system in limited quantity to be used in OT&E for verification of production engineering and design maturity and to establish a production base.

(d) *Major Defense Acquisition Program*. As specified in section 136a of title 10, U.S.C.

(1) A DoD acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and:

(i) That is designated by the Secretary of Defense as a major defense acquisition program; or

(ii) That is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than 200 million dollars (based on fiscal year 1980 constant dollars) or an eventual total expenditure for procurement of more than 1 billion dollars (based on fiscal year 1980 constant dollars).

(2) A DoD acquisition program that is so designated by the Director, OT&E, for the purpose of carrying out the responsibilities, functions, and authorities of this Directive.

(e) *Operational Test and Evaluation*. The field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and the evaluation of the results of such test.

§ 380.3 Policy.

(a) Within the Department of Defense it is recognized that operational testing is the continuum of realistic, operational field tests conducted by a Military Service independent test agency. Operational testing begins during the development period before a final decision to proceed beyond low rate initial production. this continuum of tests will employ increasing operational realism as engineering design nears its final form to provide an independent measure of development progress and of the ultimate operational effectiveness and suitability of weapon systems, equipment, or munitions, or their components. Operational testing of production (or production-representative) articles is intended to confirm that the items actually tested are effective and suitable for combat.

(b) A follow-on phase or phases of operational testing on production systems, equipment, or munitions, or their components are normally conducted after the decision is made to proceed beyond low rate initial production to assess the operational effectiveness and suitability of any changes made in the systems, equipment, or munitions, or their components.

§ 380.4 Responsibilities.

The *Director of Operational Test and Evaluation* shall serve as the Principal Staff Assistant and advisor to the Secretary of Defense on OT&E in the Department of Defense and the principal OT&E official within the senior management of the Department of Defense. In this capacity, the Director, OT&E, shall:

(a) Prescribe policies and procedures for the conduct of OT&E within the Department of Defense.

(b) Provide advice and make recommendations to the Secretary of Defense, and issue guidance to and consult with the heads of the DoD Components with respect to OT&E in the Department of Defense in general, and with respect to specific OT&E to be conducted in connection with a major defense acquisition program.

(c) Designate selected special interest weapons, equipment, or munitions as major defense acquisition programs, as the Director, OT&E considers appropriate to carry out section 136a of title 10, U.S.C. and the responsibilities functions, and authorities assigned to the Director, OT&E under this Part. Such a designation applies exclusively to the implementation of section 136a of title 10, U.S.C and this Part, and does not extend to other purposes for which the term may be used outside of this context.

(d) Develop systems and standards for the administration and management of approved OT&E plans for major defense acquisition programs.

(e) Monitor and review all OT&E in the Department of Defense to ensure adherence to approved policies and standards.

(f) Coordinate operational testing conducted jointly by more than one DoD Component.

(g) Coordinate Joint Operational Test and Evaluation (JOT&E) programs to obtain information pertinent to operational doctrine, tactics, and procedures.

(h) Initiate plans, programs, actions, and taskings to ensure that OT&E for major defense acquisition programs is designed to evaluate the operational effectiveness and suitability of U.S. military weapon systems.

(i) Review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to OT&E, including operational test facilities and equipment.

(j) Review and report to the Secretary of Defense on the adequacy of operational test planning, priorities, support resources, execution, evaluation, and reporting for major defense acquisition programs while avoiding unnecessary duplication.

(k) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies, state, local and foreign governments, and the civilian community with regard to OT&E matters.

(l) Serve on boards, committees, and other groups pertaining to assigned OT&E, and represent the Secretary of Defense on OT&E matters outside the Department of Defense.

(m) Execute such other related responsibilities as the Secretary of Defense may prescribe.

§ 380.5 Functions

The Director, OT&E, shall carry out the responsibilities described in § 380.4, above, for all aspects of OT&E, to include the following functions:

(a) OT&E programs of the DoD Components, to include their operational test facilities and resources and the coordination of Military Service OT&E activities.

(b) JOT&E programs and Joint Military Service operational testing.

(c) Analysis of OT&E results on all major defense acquisition programs.

(d) Review of budget submissions to determine the adequacy of OT&E funding.

(e) Approval of OT&E sections of the DoD Test and Evaluation Master Plan (TEMP) for major defense acquisition programs.

(f) Review of new major system requirements documents, system concept papers, decision coordinating papers and, if appropriate, integrated program summaries for OT&E implications.

(g) Enhancement of operational test realism.

(h) Development and administration of an OT&E data base.

§ 380.6 Relationships.

(a) In the performance of assigned functions, the Director, OT&E, shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense without intervening review or approval.

(2) Provide guidance to and consult with the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments with respect to OT&E in the Department of Defense in general and with respect to specific OT&E activities to be conducted in connection with major defense acquisition programs.

(3) Cooordinate and exchange information with officials of DoD Components exercising collateral or related functions. In particular, the Director, OT&E, shall consult closely with, but be independent of, the Under Secretary of Defense for Research and Engineering.

(4) Use existing facilities and services of the Department of Defense or other federal agencies, and allied countries whenever practicable, to avoid duplication and to achieve maximum realism.

(5) Serve as a permanent member of the Defense Systems Acquisition Review Council and the Defense Resources Board for the purpose of car-

rying out the principles and policies of DoD Directive 5000.1 and DoD Instruction 5000.2 and DoD Directives System issuances pertaining to test and evaluation activities.

(b) Other OSD officials and heads of DoD Components shall coordinate on all OT&E matters as prescribed herein.

(c) The Secretaries of the Military Departments shall report promptly to the Director, OT&E, the results of all OT&E conducted by the Military Departments and on all studies conducted by the Military Departments in connection with their OT&E activities.

§ 380.7 Authorities.

The Director, OT&E, is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD Directive 5025.1-M that implement policies approved by the Secretary of Defense in order to carry out the functions assigned to the Director, OT&E. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19 as necessary in carrying out assigned functions. Have access to all records and data in the DoD (including those of each DoD Component) that the Director, OT&E, considers necessary to review in order to carry out assigned functions.

(c) Act as prior approval authority for OT&E section of the TEMPS and for OT&E funding for each major defense acquisition program. Operational testing of a major defense acquisition program may not be conducted until the Director, OT&E, has approved in writing the adequacy of the plans, including the adequacy of projected levels of funding and resources for OT&E to be conducted in connection with that program.

(d) Require, as the Director, OT&E, determines necessary, that observers designated by the Director, OT&E, be present during the preparation for and the conduct of the test part of any OT&E conducted by DoD Components.

(e) Monitor and review all OT&E conducted in the Department of Defense and analyze the results of OT&E conducted for each major defense acquisition program.

(1) The Director, OT&E, shall submit a report to the Secretary of Defense and to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives that addresses specifically:

(i) The adequacy of the test and evaluation performed; and

(ii) Whether the results confirm the effectiveness and combat suitability of the items or components actually tested.

(2) Copies of the report will be provided to appropriate DoD officials and Components to facilitate the development of comments by the Secretary of Defense.

(3) A final decision to proceed with a major defense acquisition program beyond low rate initial production may not be made until the report has been submitted to the Secretary of Defense and received by the Armed Services and Appropriations Committees.

(f) Prepare an annual report for the Secretary of Defense and the Congress by January 15 of each year summarizing the OT&E activities of the Department of Defense during the preceding fiscal year.

(1) The report shall include such comments and recommendations as the Director, OT&E, considers appropriate, including comments and recommendations on resources and facilities available for OT&E and levels of funding made available for OT&E activities.

(2) Copies of this report shall be provided to appropriate DoD officials and Components to facilitate comments by the Secretary of Defense, if desired.

(g) Communicate directly with the heads of DoD Components. Communications to commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(h) Arrange for DoD participation in nondefense governmental programs for which the Director, OT&E, is assigned primary DoD cognizance.

(i) Communicate with other government agencies, representatives of the Legislative Branch, and members of the public, as appropriate, in carrying out assigned functions.

PARTS 381–399 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

BLANK PAGE

806

Table of CFR Titles and Chapters

(As of June 13, 1986)

Title 1—General Provisions

Chap.	
I	Administrative Committee of the Federal Register (Parts 1-49)
II	Office of the Federal Register (Parts 50-299)
III	Administrative Conference of the United States (Parts 300-399)
IV	Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

	Proclamations
	Executive Orders
	Other Presidential Documents
I	Executive Office of the President (Parts 100-199)

Title 4—Accounts

I	General Accounting Office (Parts 1-99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III	General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1-1199)
II	Merit Systems Protection Board (Parts 1200-1299)
III	Office of Management and Budget (Parts 1300-1399)
IV	Advisory Committee on Federal Pay (Parts 1400-1499)
V	The International Organizations Employees Loyalty Board (Parts 1500-1599)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX	Appalachian Regional Commission (Parts 1900-1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-26)

SUBTITLE B—Regulations of the Department of Agriculture

I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27-209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210-299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
V	Agricultural Research Service, Department of Agriculture (Parts 500-599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600-699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

Title 7—Agriculture—Continued

Chap.	
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600-2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXIX	Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX	Office of Operations and Finance, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200--3299)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400—3499)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200-299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0-199)
II	Department of Energy (Parts 200-699)
III	Department of Energy (Parts 700-999)
X	Department of Energy (General Provisions) (Parts 1000-1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1-199)
II	Federal Reserve System (Parts 200-299)
III	Federal Deposit Insurance Corporation (Parts 300-399)
IV	Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.	
V	Federal Home Loan Bank Board (Parts 500-599)
VI	Farm Credit Administration (Parts 600-699)
VII	National Credit Union Administration (Parts 700-799)
VIII	Federal Financing Bank (Parts 800-899)
XI	Federal Financial Institutions Examination Council (Parts 1100—1199)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1-199)
III	Economic Development Administration, Department of Commerce (Parts 300-399)
V	Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1-199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-399)
III	Office of Commercial Space Transportation, Department of Transportation (Parts 400-499)
V	National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

	SUBTITLE A—Office of the Secretary of Commerce (Parts 0-29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30-199)
II	National Bureau of Standards, Department of Commerce (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)
IV	Foreign-Trade Zones Board (Parts 400-499)
VI	Bureau of Industrial Economics, Department of Commerce (Parts 600—699)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
XII	United States Travel Service, Department of Commerce (Parts 1200-1299)
XIII	East-West Foreign Trade Board (Parts 1300-1399)
XIV	Minority Business Development Agency (Parts 1400—1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000-2099)

Title 15—Commerce and Foreign Trade—Continued

Chap.	
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0-999)
II	Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1-199)
II	Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
III	Delaware River Basin Commission (Parts 400-499)
VI	Water Resources Council (Parts 700-799)
VIII	Susquehanna River Basin Commission (Parts 800-899)
XIII	Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1-199)
II	United States International Trade Commission (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
II	Railroad Retirement Board (Parts 200-399)
III	Social Security Administration, Department of Health and Human Services (Parts 400-499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
V	Employment and Training Administration, Department of Labor (Parts 600-699)
VI	Employment Standards Administration, Department of Labor (Parts 700-799)
VII	Benefits Review Board, Department of Labor (Parts 800-899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

Chap.	
I	Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I	Department of State (Parts 1-199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200-299)
III	Peace Corps (Parts 300-399)
IV	International Joint Commission, United States and Canada (Parts 400-499)
V	United States Information Agency (Parts 500-599)
VI	United States Arms Control and Disarmament Agency (Parts 600-699)
VII	Overseas Private Investment Corporation (Parts 700-799)
IX	Foreign Service Grievance Board Regulations (Parts 900-999)
X	Inter-American Foundation (Parts 1000-1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
XII	United States International Development Cooperation Agency (Parts 1200—1299)
XIII	Board for International Broadcasting (Parts 1300—1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV	African Development Foundation (Parts 1500—1599)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1-999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)
III	National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

	SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)
	SUBTITLE B—Regulations Relating to Housing and Urban Development
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
II	Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)

Title 24—Housing and Urban Development—Continued

Chap.	
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
VII	Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700-799)
VIII	Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800-899)
IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900-999)
X	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700-1799)
XI	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (1800-1899)
XII	Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
XV	Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
XX	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

Chap.	
I	Department of Justice (Parts 0-199)
III	Federal Prison Industries, Department of Justice (Parts 300-399)
V	Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

	SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)
	SUBTITLE B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100-199)
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200-299)
III	National Railroad Adjustment Board (Parts 300-399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400-499)
V	Wage and Hour Division, Department of Labor (Parts 500-899)
IX	Construction Industry Collective Bargaining Commission (Parts 900-999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)
XX	Occupational Safety and Health Review Commission (Parts 2200-2499)
XXV	Pension and Welfare Benefits Administration, Department of Labor (Parts 2500-2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600-2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1-199)
II	Minerals Management Service, Department of the Interior (Parts 200-299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
IV	Geological Survey, Department of the Interior (Parts 400—499)
VI	Bureau of Mines, Department of the Interior (Parts 600-699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)
	SUBTITLE B—Regulations Relating to Money and Finance

Title 31—Money and Finance: Treasury—Continued

Chap.	
I	Monetary Offices, Department of the Treasury (Parts 51-199)
II	Fiscal Service, Department of the Treasury (Parts 200-399)
IV	Secret Service, Department of the Treasury (Parts 400-499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1-399)
V	Department of the Army (Parts 400-699)
VI	Department of the Navy (Parts 700-799)
VII	Department of the Air Force (Parts 800-1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900-1999)
XX	Information Security Oversight Office (Parts 2000-2099)
XXI	National Security Council (Parts 2100-2199)
XXIV	Office of Science and Technology Policy (Parts 2400—2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700--2799)
XXVIII	Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Corps of Engineers, Department of the Army (Parts 200-399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100—199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400—499)

Title 34—Education—Continued

Chap.	
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI	Office of Postsecondary Education, Department of Education (Parts 600—699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

I	Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1-199)
II	Forest Service, Department of Agriculture (Parts 200-299)
III	Corps of Engineers, Department of the Army (Parts 300-399)
IV	American Battle Monuments Commission (Parts 400-499)
V	Smithsonian Institution (Parts 500-599)
VII	Library of Congress (Parts 700-799)
VIII	Advisory Council on Historic Preservation (Parts 800-899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
X	Commission of Fine Arts (Parts 1000-1099)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)
XII	National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1-199)
II	Copyright Office, Library of Congress (Parts 200-299)
III	Copyright Royalty Tribunal (Parts 300-399)
IV	Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce (Parts 400-499)

Title 38—Pensions, Bonuses, and Veterans' Relief

I	Veterans Administration (Parts 0-99)

Title 39—Postal Service

I	United States Postal Service (Parts 1-999)
III	Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I	Environmental Protection Agency (Parts 1-799)
V	Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

Chap.

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1-50-999)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1-51-99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1-60-999)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1-101-99)

105 General Services Administration (Parts 105-1-105-999)

109 Department of Energy Property Management Regulations (Parts 109-1-109-99)

114 Department of the Interior (Parts 114-1-114-99)

115 Environmental Protection Agency (Parts 115-1—115-99)

128 Department of Justice (Parts 128-1-128-99)

SUBTITLE D—Other Provisions Relating to Property Management (Reserved)

SUBTITLE E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201-1—201-99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1-199)

III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200-499)

II Bureau of Land Management, Department of the Interior (Parts 1000-9999)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

Chap.	
	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
IV	Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400—499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
VI	National Science Foundation (Parts 600-699)
VII	Commission on Civil Rights (Parts 700-799)
VIII	Office of Personnel Management (Parts 800-899)
X	Office of Community Services, Department of Health and Human Services (Parts 1000-1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100-1199)
XII	ACTION (Parts 1200-1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
XVI	Legal Services Corporation (Parts 1600-1699)
XVII	National Commission on Libraries and Information Science (Parts 1700-1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800-1899)
XX	Commission on the Bicentennial of the United States Constitution (Parts 2000-2099)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Maritime Administration, Department of Transportation (Parts 200-399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0-199)
II	Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Department of Defense (Parts 200—299)
3	Department of Health and Human Services (Parts 300—399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.	
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
7	Agency for International Development (Parts 700—799)
8	Veterans Administration (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury Acquisition/Procurement Regulation (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)
15	Environmental Protection Agency (Parts 1500—1599)
18	National Aeronautics and Space Administration (Parts 1800—1899)
19	United States Information Agency (Parts 1900—1999)
22	Small Business Administration (Parts 2200—2299)
24	Department of Housing and Urban Development (Parts 2400—2499)
25	National Science Foundation (Parts 2500—2599)
28	Department of Justice (Parts 2800—2899)
29	Department of Labor (Parts 2900—2999)
44	Federal Emergency Management Agency (Parts 4400—4499)
52	Department of the Navy acquisition regulations (Parts 5200—5299)
61	General Services Administration Board of Contract Appeals (Parts 6100—6199)

Title 49—Transportation

	SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100-199)
II	Federal Railroad Administration, Department of Transportation (Parts 200-299)
III	Federal Highway Administration, Department of Transportation (Parts 300-399)
IV	Coast Guard, Department of Transportation (Parts 400-499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
VII	National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII	National Transportation Safety Board (Parts 800-899)
IX	United States Railway Association (Parts 900-999)
X	Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

Chap.	
I	United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
V	Marine Mammal Commission (Parts 500-599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(As of June 13, 1986)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
Operations and Finance, Office of	7, XXX
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI

Agency	CFR Title, Subtitle or Chapter
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII
Bicentennial of the United States Constitution, Commission on	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX: 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V: 33, II; 36, III
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI: 48, 52
Secretary of Defense, Office of	32, I

Agency	CFR Title, Subtitle or Chapter
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Home Loan Mortgage Corporation	1, IV
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III

BEST COPY AVAILABLE

Agency	CFR Title, Subtitle or Chapter
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, IV
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Solar Energy and Energy Conservation Bank	24, XI

Agency	CFR Title, Subtitle or Chapter
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquistion Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II

Agency	CFR Title, Subtitle or Chapter
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI

Agency	CFR Title, Subtitle or Chapter
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V

Agency	CFR Title, Subtitle or Chapter
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
United States Customs Service	19, I
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972", published in three separate volumes.

1973

32 CFR

Chapter I

		38 FR Page
201	Revised	4509
202	Added	11454
204	Added	5346
261	Revised	14167
274	Added	858

1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

32 CFR

Chapter I

		38 (39*) FR Page
214	Revised	*14699
290.6	Revised	28936
295	Added	31006
300.3	Amended	17959
300.4	(b)(1)(iii), (iv), (v), and (vi) redesignated as (b)(1) (iv), (v), (vi), and (vii); new (b)(1)(iii) and (viii) added; (b)(4) redesignated as (b)(6) and revised; new (b)(4) and (5) added	17959
300.6	(a)(1) and (b) amended; (a)(2) revised; (d) added	17960
300.7	(b) amended	17960
300.8	(b) amended	17960
300.11	(g) added	17960
301	Revised	26720

NOTE: Symbol (*) refers to 1974 page numbers.

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

32 CFR

Chapter I

		39 (40†) FR Page
286	Revised	†8190
286.5	Removed	†4911
286a	Removed; provisions incorporated in Part 297	†7300
287	Revised	†16203
290	Revised	†7301
291	Revised	†27026
292	Revised	†7292
295	Revised	†6336
296	Added	†4911
297	Added; provisions incorporated from Part 286a	†7242
298	Added	†7289
299	Added	†7300

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

32 CFR

Chapter I

		40 (41Δ) FR Page
197	Added	42187
216	Added	Δ5822
242	Added	Δ5389
245	Revised	Δ9322
285	Removed	Δ26857
286a	Added	55518
286b	Added	55526
286c	Added	55535

NOTE: Symbol (†) refers to 1975 page numbers.

NOTE: Symbol (Δ) refers to 1976 page numbers.

32 CFR—Continued

40 (41Δ) FR Page

Chapter I—Continued

286d Added....................................55535
286e Added....................................55535
287a Added....................................55535
290a Added....................................55538
291a Added....................................55543
292a Added....................................44489
295c Added....................................55543
298a Added....................................55546
299a Added....................................44294

1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

32 CFR

41 (42*) FR Page

Chapter I

191 Revised....................................*26422
199 Added....................................*17972
242a Added....................................*12853
243 Added....................................*13018
251 Added....................................27963
251.9 Added....................................*9169
(b) amended....................................*12045
251.10 Added....................................*9169
251.11 Added....................................*9169
251.12 Added....................................*9169
Table B-5 amended....................................*12045
256 Added....................................*774
256.6 Added....................................*13022
286.2 Removed; new 286.2 redesignated from 286.3....................................27074
286.3 Redesignated as new 286.2; new 286.3 redesignated from 286.4....................................27074
286.4—286.14 Redesignated from 286.6—286.16....................................27074
286.5 Removed; new 286.5 redesignated from 286.7....................................27074
286.6—286.16 Redesignated as 286.4—286.14....................................27074
287a.8 Added....................................*20298
291a.6 (b) added....................................*21776
296.2—296.7 Redesignated from 296.3—296.8....................................27074
296.2 Removed; new 296.2 redesignated from 296.3....................................27074
296.3—296.8 Redesignated as 296.2—296.7....................................27074
297 Revised....................................27074
350 Added....................................*15909
351 Added....................................*25855
352 Added....................................*25856

NOTE: Symbol (Δ) refers to 1976 page numbers.

NOTE: Symbol (*) refers to 1977 page numbers.

32 CFR—Continued

41 (42*) FR Page

Chapter I—Continued

353 Added....................................*32537

1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

32 CFR

42 (43†) FR Page

Chapter I

191 Technical correction....................................42857
192 Revised....................................†3560
197 Removed....................................†23569
199 Hearing....................................41118, 43659
203 Added....................................57123
206 Revised....................................†16975
209 Added; eff. 12-10-76....................................†4009
Technical correction....................................†5372
217 Added....................................†14650
230 Revised....................................†1066
231 Revised....................................59972
242a.2 (e) introductory text revised....................................63775
242b Added....................................63775
248 Added....................................†8137
253 Correctly added....................................†12680, 17354
260 Revised....................................†25337
268 Added....................................†11196
271 Removed....................................†26310
273 Revised....................................†21325
276 Revised....................................59072
286b.11 Revised....................................39214
289 Revised....................................47555
Technical correction....................................48885
Revised....................................†16478
290 Revised....................................40434
290a.9 (d) added....................................35157
292a.22 Revised....................................†3275
292a.23 Revised....................................†3275
298a.14 (c) revised....................................†25672
(c) technical correction....................................†26720
301 Revised....................................†23569
354 Added....................................33734
355 Added....................................36996
356 Added....................................57312

1978–1979

(Regulations published from July 1, 1978 through June 30, 1979)

32 CFR

43 (44ΔΔ) FR Page

Chapter I

195 Revised....................................ΔΔ31178

NOTE: Symbol (†) refers to 1978 page numbers.

32 CFR—Continued

43 (44ΔΔ) FR
Page

Chapter I—Continued

195a Removed..........ΔΔ33399
197 Added..........ΔΔ21786
199.7 (n)(4) revised..........ΔΔ18662
199.10 (a)(2) and (g)(8) revised; (e)(12)(v) added..........ΔΔ18662
199.14 (d)(1) and (2) revised...ΔΔ33680
207 Added..........57874
210 Removed..........36245
212 Added..........58084
213 Removed..........36245
217 Revised..........ΔΔ30336
235 Removed..........36245
240 Removed..........36245
241 Removed..........36245
242b.7 (a)(7)(iii) and (b)(3) revised; (a)(7)(iv) and (b)(4) added..........46531
246 Revised..........ΔΔ11774
250 Removed..........36245
252 Revised..........ΔΔ27095
254 Removed..........36245
263 Removed..........ΔΔ33399
265 Removed..........36245
266 Removed..........36245
267 Removed..........36245
280 Removed..........36245
288 Revised..........ΔΔ36029
292a Revised..........31130
294 Removed..........36245
351 Revised..........ΔΔ4946
354.4 (a) revised..........ΔΔ36032
357 Added..........32755
358 Added..........32757
359 Added..........32759
360 Added..........56895
360.7 (a) revised..........ΔΔ36033
361 Added..........52228
362 Added..........52231
362.7 (a) revised..........ΔΔ36033
363 Added..........57875
364 Added..........ΔΔ4470
365 Added..........ΔΔ4670
366 Added..........ΔΔ4470
367 Added..........ΔΔ11227
367.4 Revised..........ΔΔ34944

NOTE: Symbol (ΔΔ) refers to 1979 page numbers.

1979–1980

(Regulations published from July 1, 1979 through June 30, 1980)

32 CFR

44 (45*) FR
Page

Chapter 1

199.8 (b)(107) removed; (b)(22) through (106) redesignated as (b)(23) through (107); new (b)(22) added..........58709
Correction..........61345
(b)(176) removed; (b)(177) through (180) redesignated as (b)(176) through (179)..........*43408
199.10 (b)(5)(x) and (g)(4) removed; (b)(5)(xi) and (g)(5) through (78) redesignated as (b)(5)(x) and (g)(4) through (77); (c)(2)(ix) amended; (e)(14) added..........*14035
Guidelines..........*19228
(c)(2)(xii) and (d)(3)(iv) policy statements..........*28322
(e)(2)(ii) revised; (e)(8)(ii)(*c*) and (v)(*k*) through (*q*) redesignated as (e)(8)(ii)(*d*) and (v)(*l*) through (*r*); new (e)(8)(ii)(*c*) and (v)(*k*) added; (g)(24) removed; (g)(25) through (78) redesignated as (g)(23) through (76)..........*43408
199.12 (c)(3)(iii)(*d*) redesignated as (c)(3)(iii)(*e*); new (c)(3)(iii)(*d*) added; new (c)(3)(iii)(*e*)(*3*) removed; new (c)(3)(iii)(*e*) (*4*) through (*7*) redesignated as new (c)(3)(iii)(*e*)(*3*) through (*6*)..........58709
199.14 (d)(3) correctly reinstated..........*28714
(b)(3)(v) and note added; (b)(11) and (f) removed; (b)(12) and (g) through (j) redesignated as (b)(11 and (f) through (i)..........*43408
205 Added..........51571
Authority citation revised..........*41138
Technical correction..........*42608
209 Revised..........*17574
211 Revised..........50598
214 Revised..........46842
230 Revised..........70460
230.7 Correctly designated..........74819

NOTE: Symbol (*) refers to 1980 page numbers.

32 CFR—Continued

44 (45*) FR Page

Chapter 1—Continued

231.5 (a)(1), (3) and (4), (b)(1) introductory text and (v), (2) introductory text and (3) introductory text revised............56329

238 Revised............*21229

286 Revised............*28323

286b.11 Revised; eff. 7-28-80.....*43409

293 Removed............*41138

294 Added............*17576

360 Technical correction............47335

360.8 (x) added............47932

368 Added............*19547

369 Added............*34880

370 Added............*34880

371 Added............*34881

372 Added............*34882

1980–1981

(Regulations published from July 1, 1980 through June 30, 1981)

32 CFR

45 (46†) FR Page

Chapter 1

199 Policy statement...†64909, 70252, 19818, 21993

199.8 (b)(40) removed............21993

199.8 (b)(14) (i), (ii), (iii), (b)(103), (139), (176), (g)(38)(i) revised; new (c)(3)(xiv) added; (c)(3)(xiv) redesignated as (c)(3)(xv); (g)(39) removed and reserved............†29705

199.10 new (c)(2)(xiii) added; (c)(2)(xiii) and (xiv) redesignated as (c)(2)(xiv) and (c)(2)(xv)............†29705

199.11 (b) introductory text and (b)(2) revised............†29705

201 Revised............†12494

Authority citation corrected....†15505

205.10 Revised............†9083

208 Added............45580

242b.7 (a)(7)(iii) and (iv) and (b)(2), (3), and (4) revised. ....†18024

246.3 (a)(2) introductory text, (iv), (vi), and (vii) amended.....46806

246.4 (a)(1) amended............46806

257.5 (a) and (c) revised............47424

286.1—286.4 Designated as Subpart A............80502

286.5 Removed............80502

NOTE: Symbol (*) refers to 1980 page numbers.

32 CFR—Continued

45 (46†) FR Page

Chapter 1—Continued

286.10—286.14 (Subpart B) Added............80503

286.14 (h)(1) revised............†14891

286.20—286.21 (Subpart C) Added............80506

286.30—286.31 (Subpart D) Added............80506

286.40—286.44 (Subpart E) Added............80508

286.50—286.53 (Subpart F) Added............80509

286.60—286.61 (Subpart G) Added............80513

286.60 (b)(3)(iii) revised, (b)(3)(iv) and (v) redesignated as (b)(3)(v) and (vi)............†14891

286.70—286.71 (Subpart H) Added............80513

286.80 (Subpart I) Added............80514

286 Enclosures 1 through 6 removed............80502

Appendixes A through G and new enclosure 1 added............80515

286f Added............†880

288 Revised............59566

294 Enclosures 1-4 revised; enclosure 5 added............†29706

294.3 (b) revised............†29706

294.13 (c), (d) revised; (e), (f) added............†29706

295.1 Revised; eff. 7-29-81.........†33245

295.3-295.5 Revised; eff. 7-29-81............†33245

295.6 (b) and (c) revised; eff. 7-29-81............†33245

295.7-295.10 Revised; eff. 7-29-81............†33245

298a.14 (c), (g), and (h) removed............†881

299.2 Amended............†26482

299.4 (a), (b), and (c) amended; (d) revised............†26482

299.5 Amended............†26482

299.6 Revised............†26482

299a.10 (b)(13) added............80106

354.4 (c) revised............84996

354.7 (f) introductory text, (g), (m), (p), and (q) revised; (t) added............84996

359.5 (j) revised; (u) redesignated as (v) and republished; new (u) added............46071

369 Revised............†13691

NOTE: Symbol (*) refers to 1980 page numbers.

NOTE: Symbol (†) refers to 1981 page numbers.

32 CFR—Continued

45 (46†) FR Page

Chapter 1—Continued

Technical correction.................†15506
372a Added.....................................†5956

1981–1982

(Regulations published from July 1, 1981 through June 30, 1982)

32 CFR

46 (47Δ) FR Page

Chapter I

198 Removed...................................Δ7411
199 Policy statement.....................34328
Policy statement; interim...........46570
199.8 (b)(103) and (111) revised...............................34326, 34328
199.9 (b)(2) introductory text revised......................................34328
199.10 (b)(5)(iii) introductory text and (c)(3)(iii) revised.......34326
(g)(45) revised.............................47539
(e)(8)(i)(*d*), (ii)(*c*), and (v)(*c*) revised; (e)(8)(i)(*e*) added............55516
(e)(8)(ii) (*c*) and (*d*) and (iv) revised..62846
(f)(2)(iv) added...........................Δ7221
(e)(2)(i) and (ii) removed; (e)(2) note added; statement of policy..Δ12163
(a)(9)(i) Note and (d)(3)(ii)(*a*)(*4*) Note revised; (b)(5)(iii) Note revised and (c)(3)(xiii) Note revised.........Δ20123
199.11 (h)(2)(ii)(*a*)(*4*) Note revised...Δ20124
199.12 (b)(4) (i) and (viii) revised; (e)(2)(i) added................Δ7221
(e)(3) revised.............................Δ16322
199.13 (d)(2) introductory text and (ii) revised; (d)(2)(i)(*e*) added...Δ16015
210 Added...58306
212 Removed.....................................37635
Reinstated...43965
213 Added..Δ14899
230 Removed.....................................Δ2112
242b.7 (a)(7) and (b) (1) through (4) revised; (b)(5) added.........Δ24298
251 Removed.....................................39817
286.5 Enclosures 1 through 7 correctly removed...................37642
286.31 (a) designations corrected..37642
288.6 (a) revised...............................61254
291a.4 Amended...........................Δ17989

Note: Symbol (Δ) refers to 1982 page numbers.

32 CFR—Continued

46 (47Δ) FR Page

Chapter I—Continued

291a.5 Amended...........................Δ17989
291a.6 (a) introductory text revised...Δ17989
297 Removed.................................Δ5892
298a.1 (b) amended........................35640
298a.2 (d) amended........................35640
298a.3 Revised................................35640
298a.4 (b), (c), and (d) revised.....35640
298a.5 (b) (1) and (2) and (c) revised..35641
298a.6 (b)(1) revised; (b)(7) amended...35641
298a.7 (b), (c), and (d) removed...35641
298a.8 (a) amended; (c) removed...35641
298a.9 (a) introductory text and (b) revised; (a)(3)(ii) amended..35641
298a.10 (a) introductory text (4)(iii) and (b) amended...........35641
298a.11 (b) introductory text amended...35641
298a.12 Revised..............................35641
298a.14 (a) amended......................35641
298a.15 (b) and (j) revised; (c) and (g)(3) removed....................35641
373 Added.....................................Δ22529
374 Added.....................................Δ22530

1982

(Regulations published from July 1, 1982 through December 31, 1982)

32 CFR

47 FR Page

Chapter I

199.8 (b)(109) through (179) redesignated as (b)(110) through (180); new (b)(109) added..57492
199.10 (d)(3)(ii) revised................42571
(e)(15) added; (g)(28) revised.....57492
199.13 (c)(1) introductory text and (iii) revised; (c)(1)(v) added..35766
261 Revised....................................34533
286b.11 (c)(5) revised.....................44117
292a.15 (b) amended......................44257
293 Added.......................................33501
352 Revised....................................34781
353 Revised....................................32111
370 Revised....................................34983
375 Added.......................................32111

Note: Symbol (Δ) refers to 1982 page numbers.

1983

32 CFR

48 FR
Page

Chapter I

190 Removed......55282
198 Added......17350
199.8 (b)(54) revised......5917
(b) subparagraph designation removed......10310
199.9 (b)(2) (ii) and (iii) redesignated as (iii) and (iv); new (b)(2)(ii) added; (e)(3) (i) and (ii) revised......5917
199.10 (f)(4) redesignated as (f)(5); new (f)(4) added......5918
199.11 (a)(4)(i)(*a*) revised......5918
(e)(2)(iii) and (iv) revised......52910
199.12 (c)(3)(iii)(*e*) redesignated as (c)(3)(iii)(*f*); new (c)(3)(iii)(*e*) added......15625
199.14 Revised......28439
199.16 Revised......10310
218 Added......10646
219 Added......35400
230 Added......19140
231 Revised......19138
235 Added......48824
242b.6 (a)(2) removed; (a) (3) and (4) redesignated as (a) (2) and (3) and revised; (g) and (h) revised......26451
243 Revised; eff. 9-30-83......29141
251 Added......45242
253 Revised......35644
263 Added......34952
286g Added......39917
289 Revised......31019
294.9 (a)(1) and (d) revised......20228
366 Revised......17072
369 Revised......3970
373 Revised......36247
378 Added......19166

1984

32 CFR

49 FR
Page

Chapter I

198 Removed......18737
199 Technical corrections......42570
199.8 (b) amended...7562, 36090, 42569
(b) designation corrected......29216
199.9 (e)(3)(vi) introductory text, (*a*), (*b*)(*i*), (*c*)(*i*) and (*ii*) revised......22475
199.10 (e)(5)(iii)(*b*) revised......22476
(e)(6)(i)(*a*) revised; Note added......29779

32 CFR—Continued

49 FR
Page

Chapter I—Continued

(a)(11) redesignated as (a)(12); new (a)(11) added; (b)(1)(ii) through (v) and (g)(32), (48) and (49) removed; (b)(1) (vi) through (viii) redesignated as (b)(1) (ii) through (iv); (b)(4)(v), (vi), (c)(2)(v), (3)(vi), (ix), (x), (e)(4), (8)(iv), (10)(iii), (g)(1), (6), (19), (22), (41), and (44) revised......36090
(g)(56) revised......35935
(e)(8)(i)(*e*) revised......38266
(d)(3)(v) revised......42570
199.11 (c)(4)(i), (ii), and (f) revised......36093
199.12 (c)(3)(iii)(*f*) redesignated as (c)(3)(iii)(*g*); new (c)(3)(iii)(*g*)(*4*) removed; new (c)(3)(iii)(*g*)(*5*) and (*6*) redesignated as (c)(3)(iii)(*g*)(*4*) and (*5*); new (c)(3)(iii)(*f*) added......7562
Technical correction......29216
(a)(6), (b)(1)(i), (3)(i), (4)(ii) introductory text, (*b*), and (v), and (c)(3)(iii)(*a*) revised; (c)(3)(iii)(*g*) redesignated as (c)(3)(iii)(*h*); (b)(4)(viii)(*b*)(3); new (c)(3)(iii)(*g*) added......36094
199.13 (e)(2) removed; (e)(3) redesignated as (e)(2); (f)(1) introductory text and (ii) revised......36095
216 Revised; eff. 7-2-84......22802
224 Added......31865
242b.7 (a)(7) and (b)(3), (4), and (5) revised......42928
229 Added......1027
229.3 (a)(3)(iii) and (c)(2) corrected......5923
229.8 (a)(1)(i) correctly designated; (a)(4) and (b) corrected......5923
229.10 (b) corrected......5923
229.18 Heading corrected......5923
250 Added......48041
257 Revised......1490
351 Revised......9561
351b Added......9563
351c Added......9564
352 Revised......9565
369 Revised......8250
374 Removed......18737
376 Added......30463
379 Added......9567
380 Added......17937

1985

32 CFR

50 FR Page

Chapter I

199.9 (e)(3)(vi) introductory text, *(a)*, *(b)(i)*, *(c)(i)*, and *(c)(ii)* and effective date corrected....8730

(b)(2)(ii) revised....38523

199.10 (5)(iii)(*b*) and effective date corrected.... 8730

(a)(9)(i) Note, (b)(5)(iii) Note, and (c)(3)(xiii) Note revised....23121

(c)(2)(xvi) added; (g)(51) revised....23122

(a)(8) revised....52318

199.12 (b)(4)(v)(*b*) Note and (viii)(*b*)(*3*)(*vi*) Note amended....26988

199.13 (j) revised....52318

199.15 Removed....52318

199.16 (a)(6)(iv) and (e) revised....23301

199.17 Added....52318

199.18 Added....52324

218 Revised....42521

242b.7 (a)(7) and (b)(5) revised; (b)(6) added....16230

297 Added....32851

1986

(Regulations published from January 1, 1986 through July 1, 1986)

32 CFR

51 FR Page

Chapter I

199 Revised....24008

199.10 (b)(5)(xi) and (g)(39) added....2492

(a)(11) revised; (e)(8)(iv) removed; (e)(8)(v) redesignated as (e)(8)(iv)....3041

32 CFR—Continued

51 FR Page

Chapter I—Continued

Technical correction....10540

199.13 (e)(2) redesignated as (e)(3); new (e)(2) added....2492

199.16 Technical correction....10540

230 Revised....6521

231 Revised....6528

231a Added....6532

251 Revised; interim....3042

Authority citation corrected....4732

251.3 (a) and (b) introductory text corrected....4732

251.4 (a) heading and (b) introductory text corrected....4732

251.5 (a) heading and (2), (b)(3), (c)(5), and (e)(1) and (3)(i) corrected....4732

251.6 (a), (b)(1), and (d) (2) and (3) corrected....4732

251.7 (a) corrected....4732

259 Added....7013, 7022

276 Removed....7552

286a Revised....2364

286b Revised....7070

288 Revised....16024

290.2 Amended....3045

290.5 (a), (b) introductory text, (3), (4), and (5), and (c) amended; (b)(6) removed; (b)(7) and (8) redesignated as (b)(6) and (7) and amended; new (b)(8) added....3045

290.22 Amended....3046

290.24 Revised....3046

290.25 (b), (c) introductory text, (1), (3), and (5), and (e)(1)—(7) amended....3046

290.26 (b)(2) and (3) amended....3046

290.28 Amended....3046

291a Revised....12312

291a.4 (c) footnote 1 corrected....15479

360 Revised....17481

○

BEST COPY AVAILABLE